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No. 96-1452

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

STATE OF COLORADO and VICTORIA BUCKLEY, in her official capacity as SECRETARY OF STATE,
Petitioners
vs.
JENNIE SANCHEZ, ADELINE SANCHEZ and DEBRA CASANOVA,
Respondents.

AMICUS CURIAE BRIEF in support of PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit

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185 pp

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BASIS FOR REQUEST

The Citizens for the Solidarity of the San Luis Valley, Inc.(CSSLV) is a multi-ethnic bipartisan group which has the support of approximately sixty governmental organizations and community groups. This organization exists for the purpose of keeping the eight-thousand-square-mile San Luis Valley within one state legislative district.

CSSLV wishes to present to the Court the San Luis Valley's perspective of the redistricting of Colorado House District 60. CSSLV has the consent, in writing, pursuant to U.S. Supreme Court Rule 37. 2.(a), of the parties below. (Amic. Pet. App. A)

Wherefore the CSSLV requests permission from this Honorable Court to file its *Amicus Curiae* brief that addresses certain issues raised in *Thornburg v. Gingles*, 478 U.S. 30 (1986):political cohesiveness; whether the Tenth Circuit's analysis requiring a minority preferred candidate is excessive and violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and whether, in a "totality of the circumstances" test pursuant to *Gingles*, the Tenth Circuit properly considered evidence of alleged discrimination occurring eighteen years previous and one alleged private incident of ethnic discrimination as reflecting social conditions in the eight thousand square mile San Luis Valley.

CERTIFICATE OF SERVICE

I do hereby certify that on this 11 day of April, 1997, I placed in the U.S. Mail, postage prepaid and properly sealed and addressed, a copy of the foregoing PETITION TO ALLOW AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI to the following:

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APPENDIX A1

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March 31, 1997

Castelar Garcia
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RE: Filing of Amicus in State of Colorado v. Jennie Sanchez

Dear Mr. Garcia:

I consent to the filing of your amicus curiae brief in support of the State of Colorado in the above entitled case.

Sincerely,
Gale A. Norton
Attorney General

APPENDIX A2

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April 1, 1997

BY FACSIMILE

Castelar M. Garcia
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RE: State of Colorado, et al v. Jennie Sanchez, et al, United States Supreme Court, no. 96-1452

Dear Cas:

This confirms that Respondents in the above-referenced matter do not object to your filing a timely amicus brief in the above-referenced matter on behalf of the "Citizens for the Solidarity of the San Luis Valley."

Very truly yours,
Gale T. Miller

GTM: fos
cc: Gale A. Norton
Maurice G. Knaizer
Jennie Sanchez

QUESTION PRESENTED FOR REVIEW

Whether a *de facto* requirement of proportional representation of the State Legislature results under § 2 of the Voting Rights Act when the minority group:

(a) has not proposed a reasonable benchmark district incorporating traditional districting principles;

(b) has presented a limited statistical polarization analysis based only on election contests involving majority-minority candidates and has ignored electoral factors such as partisanship and incumbency; and

(c) has depended primarily upon the limited statistical analysis to prove the totality of the circumstances.

TABLE OF CONTENTS

	PAGE
PETITION TO ALLOW AMICUS CURIAE BRIEF	i
I. BASIS FOR REQUEST	ii
II. CERTIFICATE OF SERVICE	iii
QUESTION PRESENTED FOR REVIEW	iv
OPINION BELOW	1-2
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE FACTS	3
STATEMENT OF THE CASE	7
ARGUMENT OF THE CSSLV IN SUPPORT OF THE GRANTING OF THE PETITION FOR CERTIORARI	9
I. COMPACTNESS	9
II. TOTALITY OF THE CIRCUMSTANCES	12
III. CONCLUSION	13
IV. CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

CASES **PAGE**

In re Reapportionment of Colorado General Assembly, 828 P.2d 213 (Colo. 1992) 7

Johnson v. DeGrandy, 15 U.S. 997 (1994) 11,12

Marylanders for Fair Representation v. Schaefer, 849 F. Supp. 1022 (D. Md. 1994) 11

Sanchez v. Colorado, 861 F. Supp. 1516 (1994) 11,13

Shaw v. Reno, ___U.S.___, 113 S. Ct. 2816, 125 L.Ed. 2d 511 (1993) 10,11

Thornburg v. Gingles, 478 U.S. 30 (1986) ..... passim

Voinovich v. Quilter, 507 U.S. 146 (1993) 9

CONSTITUTIONS

Colo. Const. art. V, § 48 3

TABLE OF AUTHORITIES

STATUTES	PAGE
28 U.S.C. § 1254	2
28 U.S.C. § 2101	2
42 U.S.C. § 1973	2,7

OTHER AUTHORITIES

Trial Transcript, Vol. 1, *Sanchez v. Colorado*, 861 F. Supp. 1516 (1994)	11

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Respondents.

AMICUS CURIAE BRIEF in support of PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit

The State of Colorado and Victoria Buckley, the Colorado Secretary of State, petition for a writ of certiorari to review the judgment of the Court of Appeals for the Tenth Circuit in this case.

The Citizens for the Solidarity of the San Luis Valley, Inc. join in that petition for a writ of certiorari to review the judgment of the Court of Appeals for the Tenth Circuit in this case and file their *amicus curiae* brief in support thereof.

OPINION BELOW

The opinion of the Court of Appeals is reported at 97 F.3rd 1303 (10 Cir. 1996) (Amic. App. A). The district court

opinion is reported at 861 F. Supp. 1516 (D. Colo. 1994) (Amic. App. B).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1254 and 2101. The opinion of the Court of Appeals was issued on September 30, 1996 (Amic. App A). A petition for rehearing and a suggestion for hearing en banc were filed on October 15, 1996. The petition and suggestion were denied on November 29, 1996. An application for extension of time until and including March 14, 1997 to file the Petitioner for Writ of Certiorari was granted on February 14, 1997. Pursuant to Supreme Court Rule 37. 1 (a), an *amicus curiae* brief may be filed within the time limit for filing a brief in opposition.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1973:

> *Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation.*
>
> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of

circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

STATEMENT OF THE FACTS

The Citizens for the Solidarity of the San Luis Valley, Inc. (hereinafter CSSLV) accept the Statement of Facts as set forth by Petitioners which Statement is included below

As a result of the 1990 census, Colorado was required to redistrict its 65 single-member state representative districts and 35 single-member senate districts. The reapportionment process was conducted by a bipartisan, multi-ethnic commission comprised of eleven members appointed by the Governor, legislature and Colorado Supreme Court Chief Justice. Colo. Const. art. V, § 48.

State House District 60 was redrawn during the 1991 reapportionment process. Located in rural, South Central Colorado, it presently includes the six counties (Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache) which comprise a geographical region called the San Luis Valley, as well as Huerfano County and that portion of Las Animas

County that is west of the City of Trinidad (Amic. App. B-2 and Pet. App. O).[1] Hispanics comprised 45.31% of the total population of the district in 1991, and 42.38% of the voting age population (Amic. App. B-2).

Prior to considering proposed districts for Southern Colorado, the Commission reviewed a racial bloc voting analysis conducted by Election Data Services (EDS). Although EDS found some evidence of racial polarization in San Luis Valley local and county elections, it concluded that a majority Hispanic district (52%) was unnecessary because of significant white crossover voting (20%). EDS recommended that the State maximize Hispanic voting strength in the region to the extent possible, despite its acknowledgment that its data was limited. *See* Pet. App. H.

Based on these findings, the Commission approved a preliminary districting plan for H.D. 60 which contained a total Hispanic population of approximately 48%.[2] It split

---

[1] The San Luis Valley is bound on the north, east and west by mountain ranges with peaks of more than 14,000 feet. The southern end of the San Luis Valley abuts New Mexico (Amic. App. A-3 and Pet. App. O). The San Luis Valley's physical isolation engendered the development of a strong community of interest. The strength of that community of interest is reflected in the number and variety of valley-wide planning organizations such as: the San Luis Valley County Commissioners' Association; the San Luis Valley Regional Development and Planning Commission; the San Luis Valley Bar Association and the San Luis Valley Peace Officers' Association, among others. The San Luis Valley is also a single judicial district and is designated as a separate economic development district. In addition, it has its own college, Adams State College, and health and mental health services are coordinated throughout the San Luis Valley. (Pet. App. F and G.)

[2] The Commission never considered any plans which created a majority Hispanic district. At its very first meeting, the State

(continued...)

counties within the San Luis Valley and displaced two incumbents.

The Commission held twenty public hearings across the State after the preliminary plan was published (Pet. App. K-14). Most of the witnesses at hearings in Southern Colorado advocated for keeping the San Luis Valley in one house district.[3] Hispanics in the San Luis Valley testified that a majority Hispanic district was not necessary, and that any plan which split the San Luis Valley would likely decrease Hispanic political opportunity (Pet. App. M-5 - M-11).

In response to concerns raised at the hearings, the Commission decided not to adopt the preliminary plan and, instead, considered five alternative plans for H.D. 60 which kept the San Luis Valley intact. Since the San Luis Valley is sparsely populated and does not contain a sufficient number of residents to form its own single-member house

---

[2](...continued)
Hispanic League, the largest Hispanic organization in the state, informed the Commission that it was its position that no majority-minority Hispanic districts be created in the State. The League told the Commission that it preferred that the State create three Hispanic influence districts in Southern Colorado. (Pet. App. I-13 and J-4.)

[3] Since 1982, the counties comprising the San Luis Valley have been included in the same House district to avoid dilution of Hispanic voting strength. During the 1981 reapportionment process, Hispanics urged the Reapportionment Commission to place Costilla County, the most heavily Hispanic populated county in Colorado, in the same house district as the other five San Luis Valley counties. The joinder of Costilla County was supported by Representative Entz, who Respondents' claim does not represent them (Pet. App. L-4).

district,[4] the Commission considered plans which placed residents from adjoining counties in the same district as the San Luis Valley. Commission discussions focused on the most appropriate areas to include in a district with the San Luis Valley. The Commission wanted to avoid dilution of Hispanic voting strength in the Valley, as well as the voting strength of Hispanics in adjacent areas. The Commission also wanted to adhere to traditional districting principles. Faced with these difficult choices, the Commission ultimately adopted a plan which balanced all of these competing considerations. The new H.D. 60 increased Hispanic population by more than five percent over the previous plan and included only one county split (Pet. App. O, M and N).

In accordance with state constitutional provisions, the Reapportionment Commission submitted its Final Plan to the Colorado Supreme Court (Pet. App. N). Respondents Jennie Sanchez and Adeline Sanchez filed an objection to the plan for H.D. 60, claiming that it violated the Voting Rights Act. They offered an alternative district which had not been given to the Commission, and which would have increased Hispanic voting age population to 50.03%[5] (Pet. App. K-24). The Colorado Supreme Court rejected their challenge because Respondents' proposal ignored natural boundaries and split seven counties. The Colorado Supreme Court also found that the Hispanics could not show that they were politically cohesive (Pet. App. K-24 - K-25).

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[4] The ideal House district contains a population of 50,683 persons (Pet. App. K-15 - K-16).

[5] The plan is identical to one of the proposed alternative districts Respondents submitted to the district court in this case (Pet. App. E).

STATEMENT OF THE CASE

The CSSLV accept the Statement of the Case as set forth by Petitioners which Statement is included below.

On March 30, 1992, the Colorado Supreme Court approved the reapportionment plan for the Colorado General Assembly. *In re Reapportionment of Colorado General Assembly*, 828 P.2d 213 (Colo. 1992).

On May 5, 1993, Respondents filed an action, pursuant to the Voting Rights Act, 42 U.S.C. § 1973, in the federal district court for the district of Colorado, in which they claimed that the configuration of H.D. 60 violated the rights of Hispanics. The trial court, applying the test established in *Thornburg v. Gingles*, 478 U.S. 30 (1986), rejected the claim. It found that Hispanics, as a group, were not sufficiently large or geographically compact in south central Colorado to constitute a majority in a single-member district; that Hispanics were not politically cohesive; and that the non-Hispanic majority did not vote sufficiently as a bloc to enable it to defeat the preferred candidate of Hispanics. The trial court also concluded that Hispanics had not suffered vote dilution and were not deprived of the opportunity to actively participate in the political process.

In analyzing the geographical compactness component, the trial court concluded it must "consider the size and geographic compactness of the minority group within a reasonable alternative district as a benchmark against which to measure the existing district that is being challenged as dilutive" (Amic. App. B-10). The court evaluated traditional districting principles, including contiguity, communities of interest and the integrity of political boundaries, and the effectiveness of political representation (Amic. App. B-12 - B-13). The trial court's analysis of political cohesiveness and legally significant bloc voting by non-Hispanics included an inquiry into "the reasons for, or causes of, voting behavior." (Amic. App. B-21).

The Court of Appeals for the Tenth Circuit reversed and remanded to the trial court to require the State to redraw the boundaries of H.D. 60. The Tenth Circuit rejected each of the trial court's major legal conclusions. In particular, the Tenth Circuit concluded: (1) traditional districting principles and a review of Respondent's alternate district are irrelevant to the compactness analysis (Amic. App. A-23 - A-26); (2) the analysis of bloc voting may not include a review of the reasons for the differing voting patterns of Hispanics and non-Hispanics, and may be limited to election contests in which a non-Hispanic candidate runs against an Hispanic candidate (Amic. App. A-22 and A-30); and (3) factors of racial polarization and electoral success predominate in a court's review of the totality of the circumstances (Amic. App. A-42).[6]

[6] The Tenth Circuit also reversed or modified several of the trial court's findings regarding the Senate Report factors.

THE ARGUMENT OF THE CSSLV IN SUPPORT OF THE GRANTING OF THE PETITION FOR CERTIORARI

The Tenth Circuit Court erred in its application of *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2732, 92 L. Ed 25 (1986). The Trial Court properly applied *Gingles* to the facts of the case as presented.

COMPACTNESS

The Trial Court found that the Plaintiffs' minority group was not "sufficiently large and geographically compact to constitute a majority in a single member district". The Trial Court, relying on *Voinovich v. Quilter*, 507 U.S. 146, 113 S. Ct. 1149, 1156-7, 122 L. Ed 2d 500 (1993), properly held that the burden of proving that the *Gingles* preconditions are met rested upon the Plaintiffs below. The Plaintiffs below failed to meet their burden.

The Plaintiffs below have attempted to carve an area similar in size to the state of Connecticut (approximately 8,000 square miles) into several legislative districts with one of those districts being a district safe from challenge for the Plaintiffs' preferred candidate. In order to create such a district which would suit the needs of the Plaintiffs, it would be necessary for the area of that district to be split by mountains and peaks exceeding elevations of 14,000 feet which would render direct lines of communication within that district impossible. A resident of the district seeking to travel its length would be obliged to leave it and traverse other districts in order to accomplish that purpose.

Further, the Trial Court was cognizant of the major differences between an urban Hispanic population and a rural

Hispanic population with regard to attitudes, interests, income, employment and educational levels.

The present Colorado House District 60 is geographically compact, shares a very large community of interest, and wishes to remain as one contiguous legislative district. This desire is illustrated by the approximately sixty resolutions from governmental and civic organizations within the district (Amic. App. C).

Further, the CSSLV asserts that there are valid tensions between the San Luis Valley and the Pueblo area that would preclude effective representation by a "preferred candidate of the plaintiffs' choice". (Amic. App. D) The San Luis Valley wishes to retain its water supply. The Plaintiff, Jennie Sanchez, is an agent of interests that wish to remove the San Luis Valley's water supply. (Amic. App. E)

To destroy House District 60 in its present configuration and to create a district centrally divided by a mountain range with elevations exceeding fourteen thousand feet would be to violate this Court's holding in *Shaw v. Reno*, ____U.S._____, 113 S. Ct. 2816, 2820, 2825, 2831, 125 L. Ed. 2d 511, (1993) which frowned upon "bizarre" and "dramatically irregular" shaped districts. The creation of a legislative district in any other configuration than its present configuration could only be construed as an effort to segregate voters on the basis of ethnic background. The Trial Court properly voiced these considerations in its opinion noting that:

> ...[A]lthough a state can, and at times must, place great weight on race when redistricting, it may not do so to the exclusion of all traditional, nonracial districting principles, leaving a district that rationally can be understood only as 'an effort to classify and separate voters by race.'

> *Marylanders*, 849 F. Supp. at 1053, quoting *Shaw*,---U.S. at ----, 113 S Ct at 2828. Although no Fourteenth or Fifteenth Amendment claims are now before the court, it is necessary to bear in mind that redistricting must comply with the overriding demands of the Equal Protection Clause. *DeGrandy*, --U.S. at ---. 114 S St. at 2666-67 (Kennedy, J., concurring). '[A] reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race' must be subject to strict scrutiny under the Equal Protection Clause. *Id.*---U.S. at ---, 113 S. Ct. at 2832...'A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.' *Shaw v. Reno*, ---U.S.---, ---, 113 S. Ct. 2816, 2827, 125 L. Ed 2d 511 (1993). *Sanchez v. Colorado*,861 Fed. Supp. 1516, 1523 (1994).

The CSSLV asserts that political persuasion plays a greater role than ethnicity in a San Luis Valley District 60 election. The statements at trial by the witnesses, Arnold Salazar and Avelino Muniz, betray the view of San Luis Valley Hispanics toward a partisan election. Salazar says in his statement at TT v. 1., p. 163 L11:

> I would prefer to vote for a democratic Hispanic but that's not necessarily a major qualification for casting my vote.

TOTALITY OF THE CIRCUMSTANCES

The Tenth Circuit, in its totality of the circumstances test, relied upon anecdotal evidence concerning past practices of discrimination in one out of six counties in the San Luis Valley; in one community, Center, out of a total of twenty eight communities in the San Luis Valley; and extrapolated discrimination in voting to the entirety of the San Luis Valley. Further, the Tenth Circuit relied upon a perceived instance of discriminatory conduct: a sign saying "No Pase," as evidence of widespread discrimination in District 60. This sign, placed in its proper perspective, either can be interpreted innocuously, or as one instance of discrimination in an area of eight thousand square miles, an area larger than many eastern states. The Tenth Circuit's analysis is violative of *Johnson v. DeGrandy*, 512 U.S. 997, 1011, 1020-21(1994).

Moreover, the Tenth Circuit's analysis of the preferred minority candidate concept suggests that the candidate should be sensitive to certain afflictions *i.e.* low income, addictions, poor education, and unemployment. Implicit in its holding is the suggestion that the person elected need not be a minority but should be a person so afflicted. This analysis would preclude the election of another Hispanic candidate. The CSSLV suggests that the Tenth Circuit's analysis is too piercing and is repugnant to traditional notions of representative democracy in that the Tenth Circuit reaches behind traditional Fourteenth Amendment protected classifications and would substitute its perception of the preferred minority candidate for that of the electorate. This is offensive to our notion of elected representation.

Additionally, the Trial Court found, in response to the proposed remedy of the Plaintiffs below, that the remedy would diminish the number of political offices held by Hispanics both within and outside the Valley. In one instance, a Republican Hispanic would receive less support from Hispanics and, in

another instance, a Democratic Hispanic candidate would be precluded from his stated purpose of running for election to the District 60 seat. *Sanchez v. Colorado*, 861 Fed Supp. 1516, 1525 (1994). Such a result would frustrate the very purpose of the Voting Rights Act.

CONCLUSION

The San Luis Valley of Colorado, Legislative District 60, contains a diverse Hispanic population. It includes descendants of the Spanish Conquistadores and recent immigrants from Mexico and South America who have little in common with each other except a surname. Because of the vast disparities in education and income, the Hispanics of Southern Colorado do not share a commonality of interest that would make them a politically cohesive unit in the *Gingles* sense. (Amic. App. F)

Further, under the *Gingles* totality of circumstances test, it is not proper to impute practices of discrimination to an eight thousand square mile area population based upon eighteen year old practices that were resolved legally and one sign which reads "No Pase."

However, the San Luis Valley of Colorado is a very integrated unit, without regard to ethnicity, almost capable of being a state within a state. This type of political cohesiveness, as demonstrated by Amicus Appendix C, should not lightly be rendered asunder; nor should the Valley be subjected to the guaranteed election of the preferred minority candidate that reflects the ills of a segment of the Hispanic population. This practice would violate the Equal Protection Clause of the Fourteenth Amendment because it would create a protected classification within a protected classification.

For all of the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 11 day of April, 1997, I placed in the U.S. Mail, postage prepaid and properly sealed and addressed, a copy of the foregoing AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI to the following:

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Castelar M. Garcia

APPENDIX A

Jennie SANCHEZ, Adeline Sanchez, Debra Casanova, Plaintiffs-Appellants,

v.

The STATE OF COLORADO; Vickie Buckley, in her official capacity as Secretary of State for the State of Colorado, Defendants-Appellees.

The Pueblo Chicano Democratic Caucus, Colorado Hispanic Bar Association, Mexican American Legal Defense and Education Fund, Amici Curiae.

No. 94-1471.

United States Court of Appeals, Tenth Circuit.

Sept. 30, 1996.

* * *

[p. 1305] Before PORFILIO and LOGAN, Circuit Judges; and O'CONNOR, District Judge.[1]

JOHN C. PORFILIO, Circuit Judge.

---

[1] Honorable Earl E. O'Connor, Senior District Judge for the United States District Court for the District of Kansas, sitting by designation.

In 1986, the Supreme Court first construed amended § 2 of the Voting Rights Act of 1965 (VRA), Pub.L. No. 89-110, 79 Stat. 437, codified at 42 U.S.C. §§ 1973--1973o, to conclude several North Carolina legislative districts impaired the opportunity of black voters "to participate in the political process and to elect representatives of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986); § 2(b); 42 U.S.C. § 1973(b). Thus having launched a decade of challenges to multi-member election districts and at-large election procedures, *Gingles* now presides over a new round of VRA lawsuits involving the configuration of single-member districts, the 1990 census having necessitated redrawing numerous state and congressional districts. In this case, plaintiffs, Jennie Sanchez, Adeline Sanchez, and Debra Casanova, challenged the reconfiguration of their state legislative district, Colorado House District 60 (HD 60), drawn after the 1990 census, contending the resulting single-member district did not provide Hispanic voters in south central Colorado a fair opportunity to elect candidates of their choice. However, the district court de-**[p. 1306]**nied them declaratory and injunctive relief concluding the *Gingles*' quantum of proof was unmet. *Sanchez v. State of Colo.*, 861 F.Supp. 1516 (D.Colo.1994). With the guidance of two recently decided Supreme Court cases, *Bush v. Vera*, --- U.S. ----, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996), and *Shaw v. Hunt*, --- U.S. ----, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996) (*Shaw II*),[2] and *Gingles*' governing principles, we conclude plaintiffs have established under the totality of circumstances the presently configured HD 60 unlawfully dilutes the voting strength of

---

[2] Because of the concurrence of oral argument in this case and those the Supreme Court heard, we abated our decision here to await the Court's guidance and permit the parties to address those refinements.

Hispanic voters in south central Colorado. We therefore reverse.

I. Background

Plaintiffs, Jennie Sanchez and Adeline Sanchez, are Hispanic residents and registered voters in Center, Colorado, located in Saguache County. Plaintiff, Debra Casanova, resides in the city of Alamosa, Colorado, in Alamosa County. Saguache and Alamosa along with Conejos, Costilla, Mineral, and Rio Grande Counties comprise the San Luis Valley (the Valley or SLV) in south central Colorado, a flatland whose western boundary is the San Juan Mountains. On its eastern boundary are the Sangre de Cristo Mountains, its peaks towering 14,000 feet, and the La Garita Mountains and Cochetopa Hills overlap to hem in its northern borders. Principally an agricultural area, the Valley encompasses a mosaic of range, pasture, and crop lands and boasts bumper potato harvests, ranking it fifth in potato production nationally. Water issues percolate through all of this economy, the Valley sitting upon one of the nation's largest aquifers, attracting populous urban areas in and out of Colorado which threaten to divert this vital resource to distant paper mills and suburban lawns.

The Valley embraces one of three of Colorado's largest native born Hispanic populations, its Hispanic residents tracing their history back to the original settlement of the Hispano Homeland which comprised extensive Mexican land grants in northern New Mexico and southern Colorado.[3]

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[3] One of the State's experts distinguished her use of the term "Hispano" to reflect the Spanish heritage of many of the Valley's residents. Throughout the record, the terms Mexicano, Hispanic, and Hispano are used interchangeably, and we attach no

Some Hispanic families in the SLV date back to the 1800's when their ancestors first settled there. Although many of these early landowners were later dispossessed of their land, substantial numbers remained in the Valley, lured away to northern cities like Pueblo and Denver when the local agrarian economy failed to provide the wages city jobs offered. Presently, Pueblo and Denver support similarly large, native-born Hispanic populations. Indeed, Hispanics comprise the largest ethnic minority in Colorado, representing 12.5% of its total population. Colorado Vital Statistics 1990, p.18.

In the wake of the decennial federal census, the Colorado Reapportionment Commission (the Commission) was reconvened to redraw the boundaries of state senate and house legislative districts to reflect the 14% increase in the state's population from 2,889,735 to 3,294,394. Operating under Colorado Constitutional mandate[4] and federal law, the

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particularized significance to any use. We shall use the term Hispanic to avoid any confusion.

[4] The Colorado Constitution art. V, § 48(1)(a), requires: "After each federal census of the United States, the senatorial district and representative districts shall be established, revised, or altered, and the members of the senate and the house of representatives apportioned among them, by a Colorado reapportionment commission." Article V, § 46, mandates the state be divided into districts whose populations are "as nearly equal as may be," to preserve the principle of one person one vote. Article V, § 47, provides criteria for drawing districts: prohibiting counties from being divided except to meet the equal population requirements, § 47(2); requiring districts to be drawn as compactly in area as possible with districts composed of contiguous whole general election precincts, § 47(1); and requiring the preservation of communities of interest, including ethnic, cultural, economic, trade area, geographic, and

[p. 1307] politically neutral Commission[5] prioritized the criteria governing their redistricting: first, the equal population of districts with no more than a 5% deviation between the largest and smallest to maintain the principle of one person, one vote; and, second, compliance with the VRA. "Of secondary importance," the Commission's Final Report listed, "are preservation of county boundaries, the preservation of municipal lines, and the formation of compact districts," while "a third level" criterion was the preservation of communities of interest. Of final "unofficial" importance is the preservation of politically competitive districts. Final Report of the Colorado Reapportionment Commission, April 1992, p.4.

In preparation for redistricting, the Commission retained Election Data Services (EDS), a Washington, D.C.-based research and consulting firm which analyses [sic] election behavior, to examine state legislative races to determine "if legally significant racial bloc voting exists and to ascertain the percentage minority population necessary in a district for minority voters to have the opportunity to elect candidates of choice." In its first report, EDS identified two state districts with 40 and 50% Hispanic populations which appeared insufficient to elect minority-preferred candidates, the Weld County area (House Districts 50 and 51); and the southeast, south central part of the state (House Districts 43, 60, and 63). EDS concluded, based on preliminary evidence, "[i]t may be necessary to create districts that have higher concentrations of Hispanics in them in these two areas of the state."

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demographic factors, § 47(3).

[5] Members of the executive, legislative, and judicial branches appointed the eleven members of the Commission which represented five each registered Democrats and Republicans and one unaffiliated voter.

Id. at 6. Subsequently, the Commission requested EDS perform additional racial bloc voting analyses of local elections in each of the counties comprising the Valley except for Mineral County and the surrounding counties, Archuleta, Huerfano, Las Animas, and Prowers.

In its second report to the Commission, EDS observed voting in the Valley "appear[ed] to be racially polarized ... in almost every election contest examined in which a Hispanic candidate competed in 1988 and 1990." Because EDS found in *countywide* elections studied approximately 20% Anglos cross over to vote for the Hispanic preferred candidate, it recommended the State did not have to create super-majority districts to compensate for what otherwise would be completely polarized voting. Consequently, given the slightly lower turnout of minority voters and its finding Hispanic voting cohesiveness, EDS concluded, "[i]t is necessary to create districts that are more heavily Hispanic in the San Luis Valley than elsewhere in the state because of the degree of racially polarized voting found in this area of the state."

Before drafting the final plan, the Commission held hearings throughout the state, in particular, Alamosa, Pueblo, and Trinidad, south central Colorado cities which would be affected by a possible reconfiguration of HD 60. Typical of such localized public fora, a range of opinions voicing hometown and area concerns was aired: whether the Valley should be split; whether the urban interests of Trinidad and Pueblo differed from the Valley's agricultural concerns; and how reconfiguration would impact incumbent representatives to the state legislature. With little disagreement, SLV citizens urged the Commission not to split the Valley after publication of a preliminary redistricting plan proposed splitting the Valley to increase the Hispanic vote. Support from the SLV chapter of the His-

panic League[6] to keep the Valley in one district was, in fact, elicited by the SLV County Commissioner Association which, in return, publicly condemned racial bloc voting in the Valley and resolved to "establish policies that ensure that protected minorities have every opportunity to fully participate in the political process."

Nevertheless, the Valley encompasses only about 80% of the population necessary to comprise a district under Colorado law.[7] **[p. 1308]** The decision then whether to go west or east, whether to include the city of Trinidad with its large Hispanic population, or to carve into part of Pueblo, 40% of whose population is Hispanic, confronted the Commission when it convened on four occasions to weigh the alternative districts proposed for the Valley. Despite the EDS data on racial bloc voting and recommendation to create an Hispanic majority district; the awareness of the lack of success of Hispanic candidates from the SLV seeking election to the state legislature; and the concern about VRA liability, the Commission ultimately adopted the alternative which neither split the Valley nor touched Trinidad or Pueblo, preserving the incumbents' seats,[8] and added part

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[6] The Hispanic League is a statewide organization which advocates issues important to Hispanics.

[7] Indeed, only in 1982 were the Valley's counties first contained in a single state legislative district. For example, in the 1968 and 1970 elections, the Valley was split among four districts with Alamosa and Pueblo combined with Huerfano County in one district. Historically, the Valley had also been joined to the city of Gunnison, Colorado, on the western side of the Continental Divide in Gunnison County.

[8] In contrast, the proposed Ventura Plan, which would increase the Hispanic voting age population to 50.03%, would have placed Representative Mike Salaz, an Hispanic Republican

of Las Animas and all of Huerfano Counties. Except for Las Animas County, no counties are split. However, the Continental Divide slices through HD 60's western boundary, placing part of Mineral and Saguache Counties on the Divide's western slope, while Las Animas and Huerfano Counties sit on the eastern side of the Sangre de Cristo Mountains. Of the estimated 45.41% Hispanic population in the resulting HD 60, 42.38% comprise the Hispanic voting age population, a 5% increase in Hispanic voters from the prior HD 60. After this redistricting, voters in HD 60 reelected Lewis Entz, the incumbent Anglo representative, to the state legislature in 1992, maintaining the Anglo control of this seat that has existed since 1940.

Various objectors, including plaintiffs in this action, challenged the Final Plan in the Colorado Supreme Court. However, although it agreed with certain objections and remanded for corrections, the Colorado Supreme Court concluded the Final Plan satisfied constitutional criteria. *In re Colorado General Assembly*, 828 P.2d 185 (Colo.1992).[9]

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from Trinidad, HD 47, in the same district with Lewis Entz, an Anglo Republican, who has represented HD 60 since 1982.

[9] Writing separately, Justice Quinn asserted,

> I agree with the proposition that the most important criteria for evaluating a reapportionment plan are the United States Constitution, particularly the Fourteenth and Fifteenth Amendments, and the Voting Rights Act of 1965. This court's role in evaluating a claim under § 2 of the Voting Rights Act, however, is extremely limited due to the nature of the record before us. That record was not developed in an adversarial proceeding, nor was the factual basis for the reapportionment plan subjected to sworn testimony or the crucible of cross-examination. Because a Voting Rights Act claim

Subsequently, plaintiffs filed this lawsuit against the state of Colorado, members of the Commission, and other state officials (the State, collectively) challenging the legality of HD 60 under § 2 of the VRA. They alleged the 1992 configuration of HD 60 disenfranchised Hispanic voters by permitting the white majority to vote as a bloc to defeat Hispanic-preferred candidates. Alleging Hispanic voters in the area constitute a sufficiently compact population and are politically cohesive, plaintiffs asked the district court to declare HD 60 violates § 2; permanently enjoin the State from conducting further elections for representative to the Colorado General Assembly from HD 60; and order the creation of a new HD 60 to protect Hispanic rights under § 2. After a five-day trial to the court, the district court concluded plaintiffs failed to establish *Gingles'* three preconditions and did not demonstrate based on a totality of circumstances HD 60 violates § 2(b). We address the rudiments of this conclusion in abecedarian order.

II. Standard of Review

[1-33] *Gingles* not only furnishes the substantive basis for review of cases under the VRA but also clarifies the proper standard of **[p. 1309]** appellate review. Generally, the Court advises treating "the ultimate finding of vote

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> requires a fact-specific record that can only be adequately developed in the procedural and evidentiary framework of an adversarial proceeding, I do not consider this court's resolution of those claims preclusive of a challenge to the reapportionment plan in a formal adversarial proceeding initiated under the Voting Rights Act.

In re Colorado General Assembly, 828 P.2d 185, 205 (Colo.1992) (Quinn, J., concurring in part and dissenting in part).

dilution as a question of fact subject to the clearly-erroneous standard of Rule 52(a)." *Gingles*, 478 U.S. at 78, 106 S.Ct. at 2780. That is, we shall not disturb this finding unless there is no evidence in the record to support it; or, if there is some evidence substantiating it, we are, nevertheless, after reviewing all the evidence "left with a definite and firm conviction that a mistake has been made." *Zimmerman v. Sloss Equip., Inc.*, 72 F.3d 822, 825 (10th Cir.1995) (citations omitted). However formidable a standard, *Uno v. City of Holyoke*, 72 F.3d 973, 978 (1st Cir.1995), it is not insurmountable, as *Gingles* counsels, for it "does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law." *Gingles*, 478 U.S. at 79, 106 S.Ct. at 2781 (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 501, 104 S.Ct. 1949, 1960, 80 L.Ed.2d 502 (1984)). Subjecting the trial court's legal analysis to plenary review "assures the appropriate legal standards are applied," *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.*, 4 F.3d 1103, 1117 (3d Cir.1993), *cert. denied*, --- U.S. ----, 114 S.Ct. 2779, 129 L.Ed.2d 891 (1994), balances the trial court's "intensely local appraisal" of these fact-intensive cases, and best "preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law." *Gingles*, 478 U.S. at 79, 106 S.Ct. at 2781. Thus, while we do not defer to an erroneous interpretation of the law, neither will we substitute our view of the evidence for the alternative choice the fact-finder made. *Sanchez v. Bond*, 875 F.2d 1488, 1495 (10th Cir.1989) (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 1511-12, 84 L.Ed.2d 518 (1985)), *cert. denied*, 498 U.S. 937, 111 S.Ct. 340, 112 L.Ed.2d 305 (1990).

III. Section 2 of the VRA

As amended, § 2(a), 42 U.S.C. § 1973(a), declares:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2)[10] of this title, as provided in subsection (b) of this section.

After the Supreme Court later interpreted § 2 to require plaintiffs prove the contested electoral practice was intentionally adopted and maintained by state officials for a discriminatory purpose, *City of Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), Congress amended its language, codifying the "results tests" which the courts had applied before *Bolden*, and clarifying that plaintiffs need only prove the contested practice has a discriminatory effect. This amendment, § 2(b), reads:

> A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision

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[10] 42 U.S.C. § 1973b(f)(2) states:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973(b). As enacted, Section 2(b) promises protected minorities an even playing field, not a certain victory.

[p. 1310] [4] The Senate Report accompanying the 1982 amendments elaborates the proof for a § 2 violation, specifying a "variety of relevant factors, depending upon the kind of rule, practice, or procedure called into question." S.Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07.[11] The Senate

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[11] The Senate Report states:

> Typical factors include:
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> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
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> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been **28. denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Report added that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Id. at 207. Moreover, "[w]hile the enumerated factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims, other factors may also be relevant and may be considered." *Gingles*, 478 U.S. at 45, 106 S.Ct. at 2763 (citation omitted) (footnote omitted). Most importantly, "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,' and on a 'functional' view of the political process." *Id.* (quoting S.Rep. No. 417, 1982 U.S.C.C.A.N. 177, 208). The lack of electoral *opportunity* is the key. "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Id.* at 47, 106 S.Ct. at 2764.

IV. *Gingles* and its Progeny

[5] *Gingles* shorthands the totality of circumstances proof provided in the Senate Report recognizing "the conjunction" of three circumstances which, as preconditions,

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> While these enumerated factors will often be the most relevant ones, in some cases other factors will be indicative of the alleged dilution.

The Senate Report states the factors are taken from the analytical framework expressed in White v. Regester, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), as articulated by a Fifth Circuit case, *Zimmer v. McKeithen*, 485 F.2d 1297 (1973) (en banc), *aff'd sub nom. East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976).

must be present to establish a vote dilution claim. Indeed, their presence creates the inference the challenged practice is discriminatory. First, minority plaintiffs must prove their group is "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 50, 106 S.Ct. at 2766. Second, plaintiffs must show the minority group is "politically cohesive." *Id.* at 51, 106 S.Ct. at 2766. Third, they must demonstrate "the white majority votes sufficiently as a bloc to enable it--in the absence of special circumstances, such as the minority candidate running unopposed--usually to defeat the minority's preferred candidate." *Id.* While these three conditions are necessary to establish a vote dilution claim, they are not sufficient. *Johnson v. De Grandy*, --- U.S. ----, ----, 114 S.Ct. 2647, 2657, 129 L.Ed.2d 775 (1994).

Under *De Grandy*, a court's examination of relevant circumstances is not complete **[p. 1311]** "once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution." *Id.* This is so "because the ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts." *Id.* Failure to prove the totality of circumstances establishes the minority is not harmed by the challenged practice and rebuts the inference of discrimination arising from proof of the three preconditions. *Uno*, 72 F.3d at 980. In *Growe v. Emison*, 507 U.S. 25, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993), the Court expressly applied the *Gingles'* paradigm to a vote dilution claim against a single member district.

A. "Sufficiently large and geographically compact"

The first question, whether the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district," simply asks whether any remedy is possible in the first instance. As *Gingles* noted:

> The reason that a minority group making such a challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice.

478 U.S. at 50 n. 17, 106 S.Ct. at 2766 n. 17 (emphasis in original). As a corollary, if the minority group is small and dispersed, no single member district could be created to remedy its grievance.

Hence, the first prerequisite asks about "the existence of a legally cognizable injury." *NAACP, Inc. v. City of Niagara Falls*, N.Y., 65 F.3d 1002, 1011 (2d Cir.1995). As such, this element of proof assists a court in finding "a reasonable alternative practice as a benchmark against which to measure the existing voting practice." *Holder v. Hall*, --- U.S. ----, ----, 114 S.Ct. 2581, 2585, 129 L.Ed.2d 687 (1994).[12] "The inquiries into remedy and liability,

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[12] In *Holder v. Hall*, --- U.S. ----, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994), Justice Kennedy delineated the different inquiries under § 5 and § 2 of the VRA, distinctions which should be kept in mind in evaluating this § 2 case, especially after the

therefore, cannot be separated: A district court must determine as part of the *Gingles* threshold inquiry whether it can fashion a permissible remedy in the particular context of the challenged system." *Nipper v. Smith*, 39 F.3d 1494, 1530-31 (11th Cir.1994), *cert. denied*, --- U.S. ----, 115 S.Ct. 1795, 131 L.Ed.2d 723 (1995).

Because *Gingles* advances a functional evaluation of whether the minority population is large enough to form a district in the first instance, the Circuits have been flexible in assessing the showing made for this precondition.

> The first *Gingles* precondition does not require some aesthetic ideal of compactness, but simply that the black population be sufficiently compact to constitute a majority in a single-member district. Moreover, plaintiffs' proposed district is not cast in stone. It was simply presented to demonstrate that a majority-black district is feasible.... If a § 2 violation is found, the county will be given the first opportunity to develop a remedial plan.

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recent discussions in *Shaw v. Hunt*, --- U.S. ----, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996) (*Shaw II*), and *Bush v. Vera*, --- U.S. ----, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996). Noting the two sections differ in structure, purpose, and application, Justice Kennedy distinguished, "[u]nder § 5, then, the proposed voting practice is measured against the existing voting practice to determine whether retrogression would result from the proposed change. The baseline for comparison is present by definition; it is the existing status." --- U.S. at ---, 114 S.Ct. at 2587 (citation omitted). Because retrogression is not the inquiry in a § 2 case, "a benchmark does not exist by definition in § 2 dilution cases." *Id.* For example, in *Holder*, plaintiffs unsuccessfully challenged the size of a district under § 2 claiming it diluted the minority's vote.

Clark v. Calhoun County, Miss., 21 F.3d 92, 95 (5th Cir.1994) (citations omitted); *see also Houston v. Lafayette County, Miss.*, 56 F.3d 606, 611 (5th Cir.1995) ("Compactness is not **[p. 1312]** as narrow a standard as the district court construed it to be.").

[6] Geographical compactness, then, does not implicate constitutional principles. "The Constitution does not mandate regularity of district shape," the Court recently stated in *Bush v. Vera*, --- U.S. at ----, 116 S.Ct. at 1953 (citing *Shaw v. Reno*, 509 U.S. 630, 647, 113 S.Ct. 2816, 2826-27, 125 L.Ed.2d 511 (1993)) (*Shaw I*). Instead, Justice Kennedy clarified, "The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district." *Id.* at ----, 116 S.Ct. at 1971, (Kennedy, J., concurring). Stating the concept in a different way, we must determine whether the affected minority is diffused and thus politically ineffective, not whether the area by which it is bound is geographically dense.

Nevertheless, as we shall see in this case, and as demonstrated recently in *Shaw II* and *Bush*, "compactness is the conceptual point at which the tension between the traditional American commitment to territorial districting and the VRA concern for fair representation of group interests must be resolved." Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election District Appearances after Shaw v. Reno*, 92 Mich. L.Rev. 483, 535 (1993) [hereinafter *Expressive Harms*]. And, as *Shaw I* warned, "appearances do matter," 509 U.S. at 647, 113 S.Ct. at 2827, triggering, as they do, Fourteenth Amendment equal protection scrutiny.

B. Politically Cohesive

That the minority group demonstrates it is politically cohesive embodies a similarly functional focus. "If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests." *Gingles*, 478 U.S. at 51, 106 S.Ct. at 2766. Like the first *Gingles*' precondition, however, the Court does not expressly define political cohesiveness. Other courts have elaborated.

In *Gomez v. City of Watsonville*, 863 F.2d 1407, 1415 (9th Cir.1988), *cert. denied*, 489 U.S. 1080, 109 S.Ct. 1534, 103 L.Ed.2d 839 (1989), the Ninth Circuit observed, "[t]he inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority." Thus, we judge political cohesiveness by looking at the "voting preferences expressed in actual elections." *Id.* Necessarily, when we examine the evidence of political cohesiveness as voting preferences, we look to the same statistical evidence plaintiffs must offer to establish vote polarization.[13] Indeed, political cohesiveness is implicit in racially polarized voting.[14]

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[13] To the extent *Sanchez v. Bond*, 875 F.2d 1488, 1493-94 (10th Cir.1989), has been read to conclude that statistical evidence is secondary to anecdotal testimony on political cohesiveness, those readings are overstated. *Bond* simply stands for the proposition that *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), does not preclude the district court from considering such testimony.

[14] *Gingles* stated that one purpose of determining the existence of racially polarized voting is "to ascertain whether minority group members constitute a politically cohesive unit...." 478 U.S. at 56, 106 S.Ct. at 2769.

C. Racial Bloc Voting

Gingles adopted a straightforward definition of racial bloc voting provided by the expert witness upon whom the district court had relied. Racial polarization or bloc voting "exists where there is a consistent relationship between the race of the voter and the way in which the voter votes ... or to put it differently, where black voters and white voters vote differently." 478 U.S. at 53 n. 21, 106 S.Ct. at 2768 n. 21 (internal quotation marks omitted). The Court's focus was twofold: to determine whether the minority group votes cohesively and "whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769. The extent to which this bloc voting impairs the minority's ability to elect candidates of their choice, however, must be "legally significant," a sliding scale that varies with the district and a variety of factual circumstances **[p. 1313]** and may emerge more distinctly over a period of time. *Id.* While the Court offered no "simple doctrinal test for the existence of legally significant racial bloc voting," *id.* at 58, 106 S.Ct. at 2770, it urged a flexible approach, noting that the isolated success of a minority candidate in a district that usually exhibits vote polarization will not alone negate plaintiffs' showing. Thus, while legally significant white bloc voting enables the majority "in the ordinary course, to trounce minority-preferred candidates most of the time," its presence may be more subtle requiring close inquiry over time. *Uno*, 72 F.3d at 980 (citing *Voinovich v. Quilter*, 507 U.S. 146, 156, 113 S.Ct. 1149, 1156-57, 122 L.Ed.2d 500 (1993)).

To determine whether racial bias, in fact, motivated the targeted voting practice, the Court accepted the statistical method necessarily inhered to the definition of racial bloc voting. In *Gingles*, the district court had relied on expert testimony offered by Dr. Bernard Grofman, who used two

methods of analysis of voting patterns, "bivariate ecological regression analysis" and "homogeneous precinct analysis," also called "extreme case analysis." Bivariate ecological regression analysis "determines the degree of relationship between two variables--here the relationship between the racial composition in each political unit (the independent variable) and the support provided a particular candidate within that political unit (the dependent variable)." *Jenkins*, 4 F.3d at 1119 n. 10. In an ecological regression analysis, the correlation coefficient shows which data points fall on the straight line. The linear relationship created by the two variables ideally then will pack closely together on a line. Extreme case analysis examines the actual voting percentages received by candidates in racially homogeneous precincts. The inferences that arise from the latter analysis are often graphically demonstrated by the former statistical method, the latter providing actual results to demonstrate the estimates. While homogeneous precinct analysis may be a useful check on ecological regression analysis, neither method is without disadvantage, and each, like all statistical evidence, is subject to interpretation.[15]

However, while the Supreme Court approved the statistical proof provided by bivariate ecological regression and homogeneous precinct analysis, it did not expressly preclude

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[15] We are wary of the interplay between these statistical proofs arising as they do from disciplines foreign to the methodology of the bench and our usual approach to judicial resolutions. "This concern has grown with the realization that the esoterics of econometrics and statistics which both parties have required this court to judge have a centripetal dynamic of their own. They push from the outside roles of tools for 'judicial' decisions toward the core of decision making itself." *In re Fibreboard Corp.*, 893 F.2d 706, 710 (5th Cir.1990) (citation omitted). Without the exercise of care, these esoterica could transfer the decisional process from the courts to social scientists.

other methods of establishing the presence of racial bloc voting. Nevertheless, if the third *Gingles*' precondition asks whether whites vote sufficiently as a bloc to enable them usually to defeat the minority candidate, it is asking *how* voters vote, not *why* voters voted that way. Indeed, the searching evaluation done in the totality of circumstances perhaps reveals the answer to the latter question. However, at the threshold, we are simply looking for proof of the correlation between the race of the voter and the defeat of the minority's preferred candidate. We do not, therefore, reject multivariate regression analysis but prefer to reserve its use, if at all, to the more global picture plaintiffs must establish.

V. The Focus

Before addressing the district court's order, we must reiterate our focus in this case. Plaintiffs contend the *current* district violates their *federal* rights guaranteed by the VRA to have a fair opportunity to elect candidates of their choice. While that question predominates our review, it is not exclusively answered by federal law because the Colorado Constitution and state law furnish those "traditional districting principles" of which the Court so frequently speaks. *Bush*, --- U.S. at ----, 116 S.Ct. at 1952. Even in its most recent opinions, the Court reminded, "we adhere to our longstanding recognition of the importance in our federal system of each State's sovereign interest in implementing its **[p. 1314]** redistricting plan." *Id.* at ---- - ----, 116 S.Ct. at 1960-61 (citation omitted). "[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Growe*, 507 U.S. at 34, 113 S.Ct. at 1081, citing U.S. Const. art. I, § 2. Given these principles, however, we must gingerly look to federal law to assure the equality of each vote

because achieving "fair and effective representation for all citizens is concededly the basic aim of legislative apportionment." *Reynolds v. Sims*, 377 U.S. 533, 565-66, 84 S.Ct. 1362, 1383, 12 L.Ed.2d 506 (1964). Just as the Court has affirmed its unfailing championship of the Fourteenth and Fifteenth Amendments in *Shaw II* and *Bush*, it has also declared the constitutionality of § 2 of the VRA, observing, "it would be irresponsible for a State to disregard the § 2 results test." *Bush*, --- U.S. at ----, 116 S.Ct. at 1969. (O'Connor, J. concurring, joined by Stevens, Ginsburg, Breyer, Souter, JJ.).

VI. District Court's Application of *Gingles*

In posing the first *Gingles*' question, the district court misfocused its inquiry. It asked, "Is the Hispanic population sufficiently large and geographically compact to constitute a majority in the *Plaintiffs*' proposed H.D. 60?" 861 F.Supp. at 1524 (italics added). The district court proceeded to answer its question, looking to facts about the geographical uniqueness of the Valley, its agri-industries, and cities. Against these facts and the various mathematical tests used to determine compactness, the court concluded, based on "principles of contiguity, preservation of communities of interest, and minimizing the splitting of counties and municipalities, the proposed alternative H.D. 60 is not compact." *Id.* at 1525. It found plaintiffs' alternative split too many counties, was not contiguous, would "erode the number of political offices held by Hispanics in the Valley and in the adjacent districts," and burden representatives attempting to visit such a "large, geographically dispersed district." *Id.* We have no quarrel with any of these findings. However, they do not address whether plaintiffs have established the minority group is "sufficiently large and

geographically compact to constitute a majority in a single-member district." 478 U.S. at 50, 106 S.Ct. at 2766.

[9] As we have noted, satisfaction of the first precondition requires plaintiffs show a majority-Hispanic district is feasible; a remedy is possible. The evidence surely established the Hispanic population is "sufficiently large," the current district including 48.82% Hispanic population. Under Justice Kennedy's definition, the Hispanic population is also compact; for example, representing as much as 76.8% of Costilla County and at least 40% of both Alamosa and Rio Grande Counties. Nonetheless, as stated, the Valley alone does not contain sufficient population to satisfy the federal requirement of one person, one vote. In judging plaintiffs' proposed alternative, which necessarily had to exceed the Valley's bounds, the district court focused only on the shape of the geographical boundaries rather than the size and concentration of the minority population. *Houston v. Lafayette County, Miss.*, 56 F.3d at 611.

When plaintiffs *proposed* an alternative, *Gingles* required no more. While that proposal splits more counties and two cities, much of its irregularity results from its maintaining the integrity of precinct lines throughout and observing natural boundaries created by the region's geography. Even under the Colorado Constitution, compactness is not a fixed principle, but a measure of combining like regions and natural boundaries in the shortest aggregate linear distance. Colo. Const. art. V, § 47(1).[16] Indeed, the Commission crafted HD 7, which includes the city of Denver extended eastward to wrap around Denver Interna-

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[16] The State's witness, Terry Elmore, director of the Reapportionment Project, explained the various measures the State used to draw compact districts, agreeing there is no absolute measure of compactness, but only relative measures.

tional Airport with no "aesthetic ideal" in mind. *Clark*, 21 F.3d at 95. Nevertheless, plaintiffs, with minimal time on the State's computer used to draw districts, provided a feasi-[p. 1315]ble alternative.[17] Under *Gingles*, plaintiffs satisfied their burden by showing that feasibility. Drawing the necessary district is not their onus, because the State must be given the first opportunity to fashion a remedy. *Id.*[18]

We would also note by comparison to the districts the Court recently found "bizarre" in *Shaw II* and *Bush*, plaintiffs' proposed district is non-objectionable. Again, as Justice Kennedy distinguished, there is no benchmark here against which the proposed alternative district may be measured. Instead, the plaintiffs have demonstrated, as the evidence established, the Hispanic population is sufficiently large and compact to indicate the *possibility* of a remedy. Notwithstanding the conceptual burdens invested in the analysis, the district court's interpretation of this precondition unfortunately mischaracterized plaintiffs' burden and incorporated considerations and attributes to the requirement that are irrelevant to the inquiry. That is, while compact districting may "facilitate the representation of political communities," *Expressive Harms* at 501, and we recognize the role of communities of interest in the districting process, at this stage, the district court overburdened plaintiffs'

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[17] In response to the court's question, plaintiffs' expert, Dr. Robert Bardwell, stated the map was basically a computer analysis of how the district could be drawn by population alone, the effort aimed at showing the "possibility of drawing a district not to come up with a proposed plan."

[18] We would note the Commission, without objections over compactness or contiguity, considered alternative plans, one of which increased the Hispanic majority in HD 60 to 50.03%.

showing with concerns better left for its later analysis. This misdirected view of the law led the district court to erroneously find plaintiffs failed to meet their burden of proving the first *Gingles*' precondition.

VII. Political Cohesiveness and Racial Bloc Voting

[10] The district court essentially collapsed these two preconditions, intertwining observations about whether Hispanics vote cohesively on some issues with general observations about racial bloc voting. However, as we have stated, both inquiries are rooted in the same statistical evidence offered to show minorities "have expressed clear political preferences." *Gomez*, 863 F.2d at 1415. We therefore do not fault the conjunctive approach. However, the heart of each inquiry requires a searching look into the statistical evidence to discern the way voters voted. Missing this essential inquiry, the district court chose instead to examine plaintiffs' evidence and superimpose its view of "the reasons for, or causes of, voting behavior." *Sanchez*, 861 F.Supp. at 1527. Regrettably, those reasons are not relevant at this point.

Without expressly addressing any of plaintiffs' statistical evidence, the district court rejected bivariate ecological regression and homogeneous precinct analyses and embraced the State's proof based on multivariate regression analysis, "a statistical method that helps determine whether one variable--here race--makes an 'independent' contribution to voting decisions once other factors such as newspaper endorsements, incumbency, campaign spending, and the socioeconomic characteristics of the voters are taken into account." *See* Bernard Grofman, Lisa Handley, & Richard G. Niemi, Minority Representation and the Quest for Voting

Equality 83 (1992). In this case, the variable of interest the State's expert selected was the percent of Democratic vote share judged against over forty other variables. In contrast, the bivariate ecological regression analysis presented to the district court used only two variables of interest: the percentage vote for the Hispanic candidate tracked along a vertical axis with the percentage of Hispanic voting age population appearing on the horizontal axis.

To us who are statistics neophytes, bivariate ecological regression analysis identifies the differences while multivariate regression analysis explains the differences. *Id.* at 100.[19] However, "[t]he legal standard for the **[p. 1316]** existence of racially polarized voting looks only to the difference between how majority votes and minority votes were cast; it does not ask why those votes were cast the way they were nor whether there were other factors present in contested elections, such as 'white backlash.' " *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 935 (4th Cir.1987).

Despite these differences, the district court cited no basis in the evidence to validate the use of either methodology or square that evidence with the proper legal focus. Although the court stated it would "not restrict its examination to Dr. Bardwell's bivariate analysis, but will

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[19] As Dr. Grofman, who analyzed plaintiffs' data in *Gingles*, explained, "At least in those situations involving only two groups, for example blacks and nonblacks or Hispanics and nonHispanics, the methods that are appropriate for estimating the extent of racial bloc voting are bivariate methods intended to *identify* differences in the two groups' voting behavior, rather than multivariate methods that attempt to *explain* voting differences." Bernard Grofman, Lisa Handley, & Richard G. Niemi, Minority Representation and the Quest for Voting Equality 83, 100 (1992) (italics in original).

also consider Dr. Zax's multivariate analysis," 861 F.Supp. at 1527, its conclusions made no reference to plaintiffs' statistical proof[20] and did not address with any specificity the State's statistical evidence. Although the court referenced lay testimony figuring into its conclusion, it neither identified the lay witnesses nor examined how their testimony established, without more, the absence of racial bloc voting. Instead, in general, the court found "substantial evidence that many factors influence voting behavior and electoral success in H.D. 60." *Id.*[21]

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[20] Under its totality of circumstances review, the district court concluded ethnicity was only one of many factors influencing why voters vote and took "into account the problems with Dr. Bardwell's bivariate analysis (overly restrictive bivariate analysis, statistical bias, use of 1990 census data, type of races analyzed too narrowly defined, use of absentee ballots, underestimated impact of white crossover votes, failure to consider impact on adjacent districts, and the occurrence of impossible estimates, among others)...." *Sanchez v. State of Colo.*, 861 F.Supp. 1516, 1527 (D.Colo.1994). The criticism came directly from the State's expert's critique, and, absent the district court's addressing the statistical evidence or methodology, in the first instance, lacks meaning. Further, the court did not address the techniques Dr. Bardwell testified he utilized to verify the results of his analysis or his reflection that voting analysis is at best an inexact science.

[21] The district court stated:

> The following factors have influenced voting patterns in H.D. 60: (1) party affiliation of the candidate; (2) incumbency of the candidate; (3) the candidate's track record, if any, in political office; (4) the candidate's platform; (5) the candidate's name recognition in the Valley; (6) campaign strategy; (7) campaign finances; (8) effort put into campaigning and time spent campaigning door-to-door; (9) personal characteristics of the candidate, including qualifications, reputation,

At this juncture, it bears reminding Fed.R.Civ.P. 52(a) requires the district court, sitting without a jury, to "find the facts specially." That must be the premise of our clearly erroneous appellate review. Broad and general findings, not explicitly tethered to any particular testimony--especially in the VRA context which demands penetrating case by case, fact bound analysis--simply do not provide the foundation for proper appellate review. Thus, as the court stated in *Teague v. Attala County, Miss.*, 17 F.3d 796, 798 (5th Cir.1994), "in making its intensely fact-specific inquiry here, the district court ought to have discussed appellants' statistical evidence more thoroughly because that was the principal evidence they offered and because their statistics had at least surface plausibility." In this case, the district court did not even address plaintiffs' statistical proof, leaving us little basis for review.

In that absence, we till the same ground. Dr. Bardwell testified he aimed his analysis to address the question whether there is legally significant racial bloc voting in HD 60. To that end, he explained he used a two equation method for ecological regression analysis and a one equation method for the scatter plots.[22] This methodology mirrored EDS's although Dr. Bardwell stated he analyzed more

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> speaking ability, residence, family ties, gender, personal popularity, *ethnicity*, and visibility in the community; (10) identification of the candidate with past political scandals; and (11) the voter's *ethnicity*.

861 F.Supp. at 1527 (italics added).

[22] Dr. Bardwell testified to create the scatter plots, he used a statistical package called SAS, demographic data from the 1990 census, and the abstracted votes provided by the counties.

elections in the targeted counties. [p. 1317] Like EDS,[23] he did not include elections in which an Anglo candidate opposed an Anglo candidate based on the presumption Hispanic voters prefer Hispanic candidates.[24] In all, he analyzed 53 elections, 46 of which, he testified, evidenced statistically significant polarization. He included the elections for HD 60 representative, primary elections,[25] and exogenous elections incorporating the proposed alternative district to examine Hispanic cohesiveness in these non-

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[23] Dr. Bardwell attributed the minor differences between his results and those of EDS to his including absentee votes as a separate precinct and the slight variations in election data.

[24] Dr. Bardwell likened the "choice" the minority is given in the Anglo versus Anglo races to the Henry Ford adage in which Mr. Ford apparently offered customers cars painted any color they wanted as long as they were black. Thus, because he was looking for evidence of racial bloc voting, Dr. Bardwell testified he only included minority/majority races to assure the *Gingles*' focus on an *opportunity*. Similarly, he excluded Hispanic/Hispanic elections.

[25] Although the State's expert criticized Dr. Bardwell's work for including analyses of primary elections on the ground the low voter turnout undercut any exemplary meaning for these races, we believe the district court should consider this evidence. If "Democrats" are pitted against "Democrats" in a primary contest, removing the partisanship factor, one remaining variable in an ecological regression analysis would be ethnicity. In heavily Anglo precincts, Anglo candidates received the Democrat vote over the Hispanic primary candidate. Thus, these elections would seem facially probative of racial bloc voting and bear on the argument Hispanics don't lose elections, Democrats do.

coincidental jurisdictions.[26] His studies concluded in the proposed alternative district, Hispanics voted cohesively.

Of greatest interest are his results for the 1980, 1982, and 1992 elections for HD 60 representative to the Colorado General Assembly. In those "endogenous" races, that is, elections involving the legislative seats on which plaintiffs premise their vote dilution claim, the correlation coefficients, how the data points fall on a line, are 0.83%, 0.88%, and 0.82%, graphically demonstrating on the scatter plots the high correlation between the voter's ethnicity and vote for the Hispanic candidate of choice.[27] This analysis revealed 86% Hispanic cohesiveness for the 1980 HD 60 election and 84% Anglo bloc vote; 89% Hispanic cohesiveness in 1982 and 90% Anglo bloc vote; and, in 1992, 89% Hispanic cohesiveness and 83% Anglo bloc vote. Homogeneous precinct analysis largely replicated this graphic picture. A similar analysis done for both the election of then Democrat Ben Nighthorse Campbell, a Native American who ran for the United States Senate in 1992, and for the 1988 Amendment 1 ballot initiative declaring English the official language of Colorado also mirrored this pattern of Hispanic political cohesiveness in HD 60 and its expanded borders.[28]

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[26] These exogenous elections evidenced slightly lower levels of polarization than those displayed in HD 60.

[27] The values of the correlation coefficient "can range from + 1.0 (a perfectly consistent positive relationship) through 0.0 (no relationship) to--1.0 (a perfectly consistent negative relationship)." (internal quotes omitted) (citations omitted).

[28] Dr. Bardwell also studied "exogenous" elections, those occurring outside or overlapping HD 60 and involving different local offices or adjacent district seats in the General Assembly. He explained evidence of possible racial bloc voting in those races would also assist in ultimately drawing new boundaries for HD 60.

For all of the elections studied, Dr. Bardwell found a mean cohesiveness among Hispanic voters of 83% and among Anglos of 71%. Consequently, Dr. Bardwell concluded these figures established "a particularly high level of polarization."[29]

Dr. Bardwell testified his figures for the white crossover vote were slightly lower than those generated by EDS' studies: he calculated an Anglo crossover vote between 10--17% while EDS, which studied fewer elections, determined a 20% Anglo crossover vote. However, he also observed a predictable Hispanic crossover vote that ranged be-**[p. 1318]**tween 11--14% counterbalanced the Anglo crossover vote. Because of the virtual neutralization of the crossover vote demonstrating equal polarization, Dr. Bardwell concluded a majority district is necessary to give Hispanics the opportunity to elect candidates of their choice.

In contrast, the State's expert, Dr. Jeffrey Zax, testified his goal was to understand why in five counties with Hispanic voting age populations slightly under 40%, there is dramatic variation in the success of Hispanic candidates. Consequently, his focus was to account for the *difference in the rate of minority success* "explained by something other than the percent of Hispanics." To that end, he utilized the methodology of multivariate regression analysis, believing that voting behavior is a construct of complex factors. His analysis produced five conclusions: (1) heavily Hispanic

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[29] The calculations for other endogenous and exogenous elections studied were similarly dramatic despite the presence of certain discrete races, which Dr. Bardwell called "outliers," a statistical observation that did not fit this or seemingly any pattern. However, *Gingles* doesn't require perfect uniformity of result. That plaintiffs' figures presented a pattern of racial bloc voting over time is probative of *Gingles* ' second and third preconditions.

precincts vote more heavily for Democratic candidates; (2) ethnicity plays a subsidiary role; (3) other factors, incumbency, gender, etc., affect who wins; (4) socioeconomic factors affect the way precincts vote; and (5) the differences in elections arise from differences in platforms, personalities, campaign financing, and often factors difficult to measure. Taken together, Dr. Zax concluded Hispanics vote for Democrats, and Democrats don't beat Republicans in HD 60.

To validate his finding, Dr. Zax relied on seven hypothetical contests, the most pertinent of which *predicted* that an Hispanic Democrat non-incumbent male will defeat an Anglo Republican non-incumbent male in a run for the current HD 60 seat. To unseat an incumbent Anglo Republican candidate, however, an Hispanic candidate needs a more heavily Hispanic district, he observed. Nevertheless, an Anglo Democrat running against an incumbent Anglo Republican also loses by an even greater percentage, he predicted.

Thus, although his statistical model produced a similar pattern of racial bloc voting, Dr. Zax infused the calculations with different meanings. Indeed, what seems most striking about his analysis is that he used approximately the same numbers to *predict* outcomes, rather than focusing on the actual elections to examine their outcomes. Based on these predictions, plumbed from the interplay of 49 explanatory variables, Dr. Zax concluded, "political affiliation is the single most important factor that distinguishes between the vote outcomes in precincts that are heavily Hispanics [sic] and heavily Anglo in House District 60. *The role of ethnicity, on the other hand, is relatively minor.*" (italics added). That is, if Anglo Democrats compete against Anglo Republicans and partisanship is the prime determinant, the *single* variant of ethnicity virtually disappears. The inquiry sidesteps *Gingles*' primary analytic focus under § 2. More-

over, in this case, the theory does not appear to be supported by present or historical facts.

First, the naked figures demonstrate registered Democrats in HD 60 have a numerical edge in district-wide elections, if partisanship is the prime motivator of voting behavior. The district court found: (1) about 80% of the Hispanic voting age population is registered Democrat; (2) 20% is registered Republican; (3) 56% of the Anglo population is registered Republican; (4) 44% is registered Democrat; and (5) 16% is registered Independent. 861 F.Supp. at 1527-28.[30] When the percentage of Hispanic and Anglo Democratic vote is combined, *Democrat* voters district-wide voting solely along party lines would appear to command a plurality. Clearly, some other factor, however, affects the presumed Anglo and Hispanic Democratic vote. EDS concluded it was ethnicity as did Dr. Bardwell. Dr. Zax disagreed, although he testified, "in a 100% Anglo voting age population precinct, the Anglo candidate will receive a majority of the votes regardless of whether that candidate is a democrat or a republican."[31]

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[30] Dr. Bardwell testified about 56.8% of the HD 60 voting age population is registered Democrat; 27.5% is registered Republican; and 15.7% is unaffiliated. Dr. Zax's figures were similar: 56.3% of the Anglo population is registered Republican; 19.6% Hispanics are registered Republican.

[31] One of Dr. Bardwell's criticism's of Dr. Zax's report was that 73% of the precincts he analyzed did not involve Hispanic candidates. Both experts submitted critiques of each other's work. Dr. Zax criticized Dr. Bardwell's use of the 1990 census data to study the 1980 through 1990 elections, rather than the 1980 census data. In fact, the Bureau of Census often extrapolates the figures from 1980 and 1990 in such instances. However, if the numbers tend to be roughly the same, it is appropriate to use the 1990 census figures.

[p. 1319]In addition to relying on the State's multivariate analysis, the district court utilized EDS' figure that approximately 20% of Anglo voters in the Valley cross over to vote for the Hispanic candidate of choice and acknowledged Dr. Bardwell's estimate of 13--17% Anglo cross-over. Adding either of these estimates to 42.38% Hispanic voting age population, the court calculated approximately 60% of the voting age population could be projected to vote for the Hispanic candidate of choice. The court then concluded plaintiffs failed to prove the third *Gingles*' precondition, that Anglos vote sufficiently as a bloc usually to defeat the minority's preferred candidate. 861 F.Supp. at 1528.

Gingles, however, doesn't require an absolute monolith in the Anglo or Hispanic bloc vote and recognizes the existence and role of white crossover voting. It does ask, though, whether as a practical matter, whites usually vote as a bloc to defeat the minority preferred candidate. In the face of the array of statistical evidence and the discordant interpretations they produced, the historical fact that an Hispanic candidate has not won election to the state legislature from HD 60 since 1940 must also figure into the district court's evidentiary base. *See Cane v. Worcester County, Md.*, 35 F.3d 921, 926 (4th Cir.1994). Thus, whatever the numbers may mean, *as a practical matter* an Hispanic candidate has never held the HD 60 seat since the district has been drawn to include the Valley. "[T]he lack of success of Hispanic candidates is a strong factor tending to show vote dilution." *Sanchez v. Bond*, 875 F.2d at 1496.

Moreover, the record does not validate Dr. Zax's predictions. He predicted, based on his analysis of 49 explanatory variables, an Hispanic Democrat non-incumbent male will defeat an Anglo Republican non-incumbent male for the HD 60 seat. In 1982, however, the first time the Valley was included in present HD 60, Republican Lewis

Entz, the non-incumbent Anglo candidate, defeated Democrat Alex Marquez, the Hispanic non-incumbent. We believe, therefore, actual outcomes, not predictions of outcomes, provide a more appropriate test.

In concluding partisanship not ethnicity accounted for voting behavior in HD 60, the district court relied on *League of United Latin American Citizens Council No. 4434 v. Clements*, 999 F.2d 831, 853-54 (5th Cir.1993), *cert. denied*, 510 U.S. 1071, 114 S.Ct. 878, 127 L.Ed.2d 74 (1994) (*LULAC*), where minority plaintiffs contended the Texas system of electing trial judges in countywide elections violated § 2. The case is not apposite. First, it operates in a special context in which the courts have weighed the linkage of the judicial and jurisdictional districts a state draws as an important factor in the totality of circumstances. Second, it was premised on the fact that plaintiffs made no effort to establish racial bloc voting in the first instance, relying instead on what they believed was the uncontrovertible evidence of minority failure at the polls. Given *Shaw I* 's caution, "it is not mere suffering at the polls but discrimination in the polity with which the Constitution is concerned," 509 U.S. at 661, 113 S.Ct. at 2835 (White, J., dissenting) (citing *Whitcomb v. Chavis*, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971), and *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973)), *LULAC* held "[e]lectoral losses that are attributable to partisan politics do not implicate the protections of § 2." 999 F.2d at 863. However, built-in bias at the polls differs from partisan defeat at the polls. And, *LULAC* actually left for another day the question whether "limiting the racial bloc voting inquiry to a determination whether or not divergent voting patterns are attributable to partisan differences or an underlying divergence in interests best captures the mandate of § 2," recognizing that "partisan affiliation may serve as a proxy for illegitimate racial considerations." *Id.* at 860.

LULAC is, thus, distinguishable and, despite its particular factual context, does not refocus the probativeness of plaintiffs' substantial statistical evidence here.

[p. 1320] We believe the district court relied too much on *LULAC* and not enough on *Gingles* in its ultimate analysis of plaintiffs' proof. We would also trace its mischaracterizing the evidence of racially polarized voting, in part, to its misperceiving *Gingles'* position on the minority's candidate of choice. Citing Justice Brennan's discussion in Part III-C in which only three Justices joined, the district court embraced the per se view that the race of the candidate is irrelevant to the racial bloc voting analysis, a view that five Justices rejected. 861 F.Supp. at 1526. In a separate concurrence, Justice White observed that if race was neutralized by removing the candidate's ethnicity from the racial bloc voting equation, and blacks and whites simply voted along party lines, we could substitute interest group politics "as a rule hedging against discrimination" to explain each outcome. 478 U.S. at 83, 106 S.Ct. at 2783 (White, J., concurring). "I doubt this is what Congress had in mind in amending § 2 as it did," Justice White wrote. *Id.* Justice O'Connor, joined by three other Justices, agreed that defendants cannot rebut a showing of racial bloc voting "by offering evidence that the divergent racial voting patterns may be explained in part by causes other than race, such as an underlying divergence in the interest of minority and white votes." 478 U.S. at 100, 106 S.Ct. at 2792 (O'Connor, J., concurring in the judgment).[32] The *Gingles'* majority, then, concluded the candidate's race is

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[32] However, Justice O'Connor rejected the proposition this additional evidence is never relevant to answer the question whether white bloc voting consistently defeats the minority candidate of choice, recognizing its role in the ultimate determination based on the totality of circumstances.

never irrelevant but, generally, is "of less significance than the race of the voter--but only within the context of an election that offers voters the choice of supporting a viable minority candidate." *Citizens for a Better Gretna v. City of Gretna, La.*, 834 F.2d 496, 503 (5th Cir.1987), *cert. denied*, 492 U.S. 905, 109 S.Ct. 3213, 106 L.Ed.2d 564 (1989).

Second, while lay testimony is relevant to determine who is the candidate of choice, it is not alone dispositive. In *Gingles*, the Court acknowledged the district court "credited some testimony of lay witnesses, but relied principally on statistical evidence." 478 U.S. at 52, 106 S.Ct. at 2767. *Sanchez v. Bond* also approved the use of lay testimony. However, absent the finding the statistical evidence is unreliable, insufficient, or irrelevant, lay testimony should not eclipse the analysis.

Certainly, key to examining racial polarization in the challenged electoral mechanism is determining for whom voters vote. "Ascertaining whether legally significant white bloc voting exists begins with the identification of the minority members' 'preferred candidates' or 'representatives of their choice.' " *Collins v. City of Norfolk, Va.*, 883 F.2d 1232, 1237 (4th Cir.1989), *cert. denied*, 498 U.S. 938, 111 S.Ct. 340, 112 L.Ed.2d 305 (1990). Only then can the district court determine whether whites vote sufficiently as a bloc usually to defeat the minority's choice.

Although this court has accepted evidence of Anglo versus Anglo races on the ground such elections may be relevant to discern whether racially polarized voting is present, we cautioned the evidence is useful only "so long as one of the Anglo candidates can be considered a preferred candidate of the minority group." *Sanchez v. Bond*, 875 F.2d at 1495. *Sanchez v. Bond* offers no guidance for the district court to determine who is the minority's candidate of

choice. However, without that evaluation and with a history of Anglo/Anglo contests, we fall prey to the myopic presumption there is a minority preferred candidate in any race in which the minority votes. While some courts shortcut the question looking only to the candidate who has received more than 50% of the minority vote, *NAACP*, 65 F.3d at 1019, we now believe some additional direction would be helpful.

[11] Again we turn to *Gingles* which requires plaintiffs establish by a preponderance of the evidence who is the preferred minority candidate in each election. While "experience does demonstrate that minority candidates will tend to be candidates of choice among the minority," this inference alone is not sufficient to meet plaintiffs' burden. *Jenkins*, 4 F.3d at 1126. Hence, minority plaintiffs must introduce some additional evi-**[p. 1321]**dence, anecdotal or otherwise, to satisfy this burden. "The additional evidence required to meet the threshold, however, is not very substantial, and the burden may be satisfied with a variety of evidence, including lay testimony or statistical analyses of voting patterns." *Id.*

We also embrace *Jenkins*' guidance to judge defendants' evidence that white candidates were, in fact, minority preferred. The Fourth Circuit counsels in measuring this evidence, "the court must engage in a detailed, practical evaluation of the extent to which any particular white candidate was, as a realistic matter, the minority voters' representative of choice." *Id.* at 1129. One factor it suggests is the "extent to which the minority community can be said to have sponsored the candidate," to examine minority involvement in originally sponsoring the candidate or helping to finance the candidate's campaign. *Id.* Another factor is the candidate's attention to the issues concerning minorities; the extent the candidate campaigned in the mi-

nority's neighborhoods or addressed predominantly minority crowds. *Id.* Evidence of minority turnout for the election would also be relevant as well as evidence of "disincentives" for minorities to run for office in the first instance. *Id.* Another factor is evidence of the Anglo candidate's ties to the minority community. For example, in this case, one of plaintiffs' witnesses, an Anglo elected Saguache County Commissioner, was the minority preferred candidate because, he testified, he is married to an Hispanic who helped him campaign in Hispanic precincts. This list, of course, is not exclusive, and the district court must be sensitive to the quality of the evidence plaintiffs and defendants offer to assist in this factfinding.

Thus, after such a searching evaluation, the district court may find the minority preferred candidate is, in fact, Anglo. However, the answer cannot be shorthanded by the candidate's partisan label or ethnic or racial status. As Justice O'Connor noted, the question arises within the context of determining whether racial bloc voting defeats the minority's *opportunity* to elect a candidate of its choice. Indeed, the VRA ensures members of a protected class equal opportunity "to elect representatives *of their choice*," not "*necessarily members of their class*." *NAACP*, 65 F.3d at 1015. However, § 2's "guarantee of equal opportunity is not met when '[c]andidates favored by blacks can win, but only if the candidates are white.' " *Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir.1994) (quoting *Smith v. Clinton*, 687 F.Supp. 1310, 1318 (E.D.Ark.1988) (three-judge panel)).

While any statistical analysis permits a body of data to tell a story, how the story is read, each reader bringing a different focus to the details, alters the theme. The glass, after all, is either half empty or half full. *Gingles*, however, instructs us to look for the theme of racial polarization and

the extent to which that polarization robs the minority of meaningful access to the political process. While that may initially set a rather stark stage, "establishing vote dilution does not require the plaintiffs affirmatively to disprove every other possible explanation for racially polarized voting." *Uno*, 72 F.3d at 983. Requiring plaintiffs to rebut a showing that partisan politics and not racial bias operates to defeat their § 2 claim may arise in another setting. However, it is not the story here.

We therefore hold the district court committed reversible error in concluding plaintiffs failed to establish racial bloc voting. First, the district court rejected plaintiffs' evidence of racial bloc voting, even though they used the same statistical method approved in *Gingles* and most of the § 2 case law. Although criticizing various aspects of the methodology, without any searching analysis of the evidence in the first instance, the court's critique is without foundation. Second, it adopted the State's statistical theory on the mistaken view that why voters vote a certain way answers *Gingles*' question about the existence of racial bloc voting. Finally, the court overlooked the substantial evidence of Anglo bloc voting, incorrectly holding that the single factor of partisanship explained electoral outcomes in a § 2 challenge in HD 60.

Because the district court misread the governing law, we reverse its conclusion plaintiffs failed to establish geographical compact-[p. 1322]ness, Hispanic cohesiveness, and Anglo bloc voting. We turn now to the ultimate issue of the totality of circumstances.

VIII. Totality of Circumstances

The Senate Report expands two of *Gingles*' preconditions which adumbrate our review of the totality of circumstances: the existence of racially polarized voting and the extent to which minorities are elected to public office. 478 U.S. at 48 n. 15, 106 S.Ct. at 2765 n. 15.[33] Even if plaintiffs succeed in the preliminary *Gingles*' proof and create the inference that minority voters are harmed by the challenged electoral practice, the inference metamorphoses the fact of vote dilution when other explanations for voting outcomes are dispelled. Although § 2 violations may be pronounced only after a flexible, fact-intensive examination of this broadened evidentiary base, the Senate Report places three limits on such proof.

> First, electoral devices ... may not be considered *per se* violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it.

Gingles, 478 U.S. at 46, 106 S.Ct. at 2764 (citations omitted).

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[33] We note the Senate Report makes no mention of geographical compactness or the size of the minority group. While the case law bears out the inference this precondition is less important in proving a § 2 violation, it remains an essential element in the *Gingles*' schemata and, as we later discuss, has become the lightening rod for equal protection scrutiny.

[12] Plaintiffs are not required to rebut all the evidence of non-dilution to establish vote dilution. "Rather, the provision requires the court's overall judgment, based on the totality of circumstances and guided by those relevant factors in the particular case, of whether the voting strength of minority voters is, in the language of *Fortson v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965), 'minimized or canceled out.' " 1982 U.S.C.C.A.N. at 207 n.118. "[T]he ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts." *De Grandy*, --- U.S. at ----, 114 S.Ct. at 2657.

[13] In this case, even though the district court concluded plaintiffs failed to prove each of the *Gingles*' preconditions, it proceeded to the next phase of analysis and concluded based on the totality of circumstances plaintiffs had failed to establish vote dilution. While it is the rare case for minority plaintiffs to satisfy the *Gingles*' preconditions and fail to overcome defendants' evidence that other factors rebut that initial proof, in this case, having concluded plaintiffs made no preliminary showing a remedy is even possible and then finding the totality of circumstances also defeat their claim is remarkable.

Nevertheless, the court's conclusion remains tied to its erroneous application of the contours of the *Gingles*' proof; therefore, it cannot stand. In particular, the court's determination of no racial polarization and a lack of Hispanic political cohesiveness predestined its review of all the evidence and submerged critical facts into less relevant factors. We canvass these findings to explain our conclusion.

First, the district court found no evidence of a history of official discrimination that has "touched the right of the members of the minority group to register, to vote, or

otherwise to participate in the democratic process." 1982 U.S.C.C.A.N. at 206. Although plaintiff, Jennie Sanchez, testified about voter registration problems in Saguache County: voter registration branches placed in Anglo homes where Hispanics would feel uncomfortable entering, limited hours for field workers to register to vote, and the appointment of all Anglo election judges, the district court found plaintiff's official complaint to the State prompted remedial action.[34] **[p. 1323]** Plaintiff testified, in 1986 or 1988, the names of several Hispanic voters whom she had assisted in registering were absent from the voting rolls when they attempted to vote. Charles Grant, a Saguache County Commissioner from 1984-1990, testified he first instituted advertising vacancies on local boards to permit a more open selection process in what was otherwise a system in which Anglo commissioners tapped their friends for appointments. Plaintiff, Jennie Sanchez, also testified, in 1992, the Center Post-Dispatch, a Saguache County newspaper, published a list of absentee voters. The names were mostly Hispanic surnames, which, plaintiff thought masked a subtle racial appeal against Hispanics. Although we agree the list is "a matter of public record," as the district court found, 861 F.Supp. at 1529, the focus here must be *the minority's* perception of the action. To the Hispanic community, publishing a list of Hispanic absentee voters makes a statement about immigrant status, particularly offensive in a predominantly native-born Hispanic population. "In this enlightened day and age, bigots rarely advertise an intention to engage in race-conscious politics." *Uno*, 72 F.3d at 984. While there may be a host of other explanations, minority plaintiffs

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[34] In 1977, the Colorado Attorney General found sufficient evidence of discrimination against Hispanic citizens to warrant referring his report to the Voting Rights Section of the Department of Justice.

are entitled to present circumstantial evidence of racial discrimination to rebut the State's offering other explanations.

Finally, the court acknowledged plaintiffs "perceived" a discriminatory motive behind the ballot initiative making English the official language of Colorado, but stated, "the Amendment was soundly defeated by a solid coalition of Hispanic and Anglo voters." 861 F.Supp. at 1528. In fact, Colorado voters approved Amendment 1. *See* Colo. Const. art. II, § 30a. Hispanic voters in HD 60 overwhelmingly voted against it.

Gingles asks how the challenged electoral structure "interacts with social and historical conditions *to cause* an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." 478 U.S. at 47, 106 S.Ct. at 2764 (italics added). Clearly, the Senate Report targets the vestiges of discrimination which may lurk like "a silent, shadowy thief of the minority's rights" continuing to disadvantage minority opportunity. *Uno*, 72 F.3d at 984.

The district court found most of this evidence too remote in time to establish a present impediment to voting in HD 60. We agree the record discloses no current metastases of past discriminatory practices. While it is difficult to draw a bright line demarcating the end of any history of official discrimination in voting, we are satisfied on the whole the district court did not err in concluding such past practices are sufficiently attenuated to mitigate their present effects. Nevertheless, while plaintiffs cannot rely on the lingering effects of alleged discrimination to bolster their case, neither can defendants *explain* the showing of vote dilution by eliminating this factor from the problem.

Another Senate factor asks the extent to which members of the minority "bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process." The Senate Report explains, "The courts have recognized that disprorportionate educational, employment, income level and living conditions arising from past discrimination tend to depress minority political participation." 82 U.S.C.C.A.N. at 207 n.114.

Although the district court recognized the higher unemployment and poverty rates borne by the Hispanic community in HD 60, it credited certain lay testimony that today, "Hispanics have equal access to education, jobs, and loans," disconnecting any past socioeconomic discrimination from present participation in the political process. 861 F.Supp. at 1529. We believe this finding is, on the whole, contradicted by the overwhelming weight of plaintiffs' evidence, testimonial and documentary. One of plaintiff's experts, Dr. Rodolfo de la Garza, testified that poverty, unemployment, school drop-out, housing, and alcoholism disproportionately affect the Hispanic community in south central Colorado. Based on the 1990 census and demographic information from state agencies, he concluded education, age, income, and employment, accepted predictors of voter participation, create a "reinforcing milieu" which impedes Hispanic participation. This testi-**[p. 1324]**mony was echoed by experts on both sides as well as lay witnesses and legislative representatives discussing the need to increase school funding in south central Colorado. While the record contains testimony about Hispanic students graduating from high school and attending area colleges and community colleges, the broader picture of lower educational achievement by

Hispanic students predominates.[35] Indeed, the district court noted broadly, "[a]ccording to the 1990 Census data, Anglos in the Valley have higher education and income levels than Hispanics, as well as lower unemployment and poverty rates...." 861 F.Supp. at 1529.

The district court found "Hispanics in H.D. 60 turn out to vote at rates only slightly less (1%) than non-Hispanics," while "Hispanic voter registration is virtually equal to Anglo voter registration." 861 F.Supp. at 1529. While it noted, "Plaintiffs themselves have been successful in establishing convenient voter registration hours and in substantially increasing Hispanic voter registration and turnout," *id.*, the testimony reflects this effort redressed discriminatory barriers local officials erected to Hispanic voter registration. In most instances, their vigilance didn't supplement existing voter registration but permitted it to occur in the first instance.

We agree the record includes testimony offered by teachers, Hispanic business owners, elected and party officials to establish that these and other individuals have succeeded.[36] However, the record is replete with

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[35] The record includes a 1978 letter from the Regional Director of Civil Rights finding the Saguache County School District segregated students on the basis of national origin. Current demographic studies in the record reflect the lingering impact of educational disadvantages in the Hispanic community.

[36] Although Hispanics are employed in the Valley's potato industry, few hold managerial positions and Anglos own most of the large potato warehouses. The record contains a photograph of the front gate of a potato warehouse bearing the sign, "No Pase." The gate doesn't display a "No Trespassing Sign;" and while not evidencing "official discrimination," as the district court distinguished, this evidence falls within the intensive canvassing of

demographic, historic, and socioeconomic data which comprehensively fills the canvas. Each facet must be considered under the totality, and the absence of one factor doesn't necessarily cancel out the presence of another. As we stated, the Senate Report doesn't require a final score. While there is some evidence to support the district court's general conclusion, the evidence on the whole points the other way underscoring the nexus upon which the Senate factor focusses.

The district court found no evidence in political campaigns of overt or subtle racial appeals, giving little weight to allegedly discriminatory comments that it found were either hearsay or too remote in time, and finding the publication of the list of absentee voters unnoteworthy. The court's finding is not clearly erroneous.

The second important carryover from the *Gingles* ' "gloss on the totality of the circumstances" is a thoughtful look at the extent to which Hispanics have been elected to office. *Jenkins*, 4 F.3d at 1115. The district court found besides controlling the Democratic party in the Valley, "Hispanics have run for and been elected to numerous political offices in the Valley [and] elected and appointed to local, county, and state-level boards, commissions, and offices." 861 F.Supp. at 1530. We believe the record does not justify the district court's credit of the extent to which minorities have been elected to public office in HD 60.

The Senate Report cautions, "the election of a few minority candidates does not necessarily foreclose the possibility of dilution of the [minority] vote, in violation of this section." 1982 U.S.C.C.A.N. at 207 n.15 (citation omitted); *see also Gingles*, 478 U.S. at 76, 106 S.Ct. at

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local fact-finding the Senate Report anticipated.

2779-80. The Report explains, "Were we to hold that a minority candidate's success at the polls is conclusive proof of a minority group's access to the political process, we would merely be inviting attempts to circumvent the Constitution...." *Id.*

Thus, some success at the polls does not negate a showing of polarized voting or disprove the existence of vote dilution. Moreover, "exogenous elections--those not involving the particular office at issue--are less **[p. 1325]** probative than elections involving the specific office that is the subject of the litigation." *Clark v. Calhoun County*, Miss., 88 F.3d 1393, 1397 (5th Cir.1996). Plaintiffs here complain they cannot elect their candidate of choice to the Colorado General Assembly because the configuration of HD 60 dilutes their vote. They offer the single fact an Hispanic has not been elected to this particular office since 1940. That fact is probative under the totality, notwithstanding the mayoral offices, rural electrical boards, and other seats Hispanics have achieved.

An additional factor the district court examined is whether elected officials are responsive to the particularized needs of the minority group. It found generally that HD 60 Representative Lewis Entz has addressed issues important to his Hispanic constituency, cooperates with Hispanic representatives in the legislature, and works for "economic development, education, and water." 861 F.Supp. at 1530. Although Mr. Entz was taken to task for referring to Hispanics as "wetbacks," he testified he didn't believe the term was derogatory but apologized for using it publicly.

While there is evidence to the contrary, we do not judge the district court's finding HD 60's elected official responsive to the minority community clearly erroneous. This factor, however, does not defeat plaintiffs' claim. "Unresponsiveness is not an essential part of plaintiff's case," the

Senate Report states, and the cases consider it of only "limited relevance." 1982 U.S.C.C.A.N. at 207 n.116; *Harvell v. Blytheville School Dist. No. 5*, 33 F.3d 910, 917 (8th Cir.1994). In *Clark*, 88 F.3d at 1400, the Fifth Circuit concluded the district court attached too much weight to the finding the county was responsive to the minority community's needs. The Fifth Circuit counseled, "[r]esponsiveness, like many things, is a question of both kind and degree. While two cities may both be said to be responsive to minority needs, the two may vary greatly in approach and commitment. The totality-of-circumstances inquiry is not blind to those differences." *Id.* at 1401; *see also Westwego Citizens for Better Government v. City of Westwego*, 946 F.2d 1109, 1123 (5th Cir.1991) (§ 2 violated although plaintiffs did not prove lack of responsiveness). Thus, while the district court's finding is not clearly erroneous, its relevance and weight in the entire balance are limited.

Finally, the court found the policy underlying the state's drawing HD 60 was not tenuous, citing that evidence "show[ing] that the Colorado Reapportionment Commission followed the dictates of § 2 in drawing H.D. 60 from the beginning to the end of the reapportionment process." 861 F.Supp. at 1530. It noted the newly drawn district actually increased the Hispanic voting age population by 5%, was approved by the Colorado Supreme Court, and reflected the overwhelming community sentiment to keep the Valley whole.

The Senate Report explains this factor, indicating "[i]f the procedure markedly departs from past practices or from practices elsewhere in the jurisdiction, that bears on the fairness of its impact. But even a consistently applied practice premised on a racially neutral policy would not negate a plaintiff's showing through other factors that the

challenged practice denies minorities fair access to the process." 1982 U.S.C.C.A.N. at 207 n.117.

The record casts doubt on the court's finding the Commission from beginning to end observed the tenets of § 2. Indeed, the final decision to draw HD 60 in its present form eschewed EDS's recommendation a majority Hispanic district was required based on the research the Commission specifically requested.[37] Further, members of the Commission voiced concern that accommodations were made to create black majority districts elsewhere in the state[38] when the case pre-[p. 1325]sented by the Hispanic community in

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[37] At the final meeting, a Commission member stated, "I guess the question that I have, everybody is talking in figures of 45 or 46 and in light of what we just did in Denver to get 49 percent black in a district [which] the EDS report says has a lot less problems as far as whites being willing to vote for minority candidates. San Luis Valley it said had a bigger problem. Why are we talking about 45 or 46 percent, when we just said 49 was what we had to do in Denver when there was a lot of white crossover voting that were voting comparably to the valley."

[38] One Commission member argued, "I guess my reply to that, is that if you do believe the EDS data and, I guess the leadership of [the] legislature selected those guys to do the work, the only empirical data that we have, that the court's use, we should be doing the Denver districts at 45, and this one at 49 or 50, at least. They said 50% voting age in the valley. We're doing just the opposite. You know, we may be able to juggle a few of those numbers. I think that we have a really, really weak case if we do this in court."

south central Colorado was equally as compelling.[39] These facts bear upon whether the resulting district is fair.

The question then becomes whether the decision to draw HD 60 in the complained of configuration "markedly departs from practices elsewhere in the jurisdiction, that bears on the fairness of its impact." As noted, the decision was a quintessentially political one, ramified by concerns about pitting incumbents against each other, splitting cities differently, and dividing the Valley to create the necessary population base. In the final vote, these "traditional districting principles," splitting counties and cities and the protection of incumbents, were elevated over compliance with § 2 despite the Commission's knowledge of a perceived vote dilution problem in HD 60. Although the resulting district increased the Hispanic voting age population by 5%, the record establishes the Commission was fully aware that effort was insufficient to create the Hispanic majority district EDS recommended based on the extent of racially polarized voting. We do not suggest traditional districting principles were used as a pretext for discrimination. Nevertheless, "it would be irresponsible for a State to disregard the § 2 results test." *Bush*,

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[39] At the meeting, a member from Denver observed, " I just have some difficulty thinking that all of a sudden there is a change of heart in that 53% of the people that make up the other part of the population. Now in saying that's okay, we've not been fair to you ... we've treated you badly, we're going to do something about it. Passing resolution by county commission and what have you, don't necessarily indicate to me that things would change. Would that have happened if we had not published this preliminary plan." The speaker is referring to the Ventura Plan, proposed by a Commission member, which would have split the Valley, included the city of Trinidad, and increased the Hispanic voting age population to approximately 46.84%. Publication of the proposal, as noted, prompted the SLV County Commissioner Association to act.

--- U.S. at ----, 116 S.Ct. at 1969. Again, plaintiffs have offered evidence of the process which the Senate Report envisioned placing within the quantum tending to show a violation under the totality of circumstances. Plaintiffs did not have to show the resulting district was a pretext for discrimination. The "fairness of the impact" was demonstrated by the 1992 election in which the incumbent was returned to the General Assembly for his sixth consecutive term.

Thus, "through other factors," racially polarized voting and electoral success for the HD 60 seat, we believe plaintiffs have presented evidence to rebut the State's contention the resulting district does not deny them "fair access to the process." Again, the district court misjudged the weight to be attributed this factor and allowed secondary evidence to subsume the primary evidence of racial polarization.

IX. *Shaw II* and *Bush*

In its conclusion, the district court characterized plaintiffs' § 2 claim, "[a]s a practical political matter," an effort "to segregate political districts by race [which] can only serve to deepen racial divisions by destroying any need for voters or candidates to build bridges between racial groups or to form voting coalitions." 861 F.Supp. at 1531 (citing *Holder v. Hall*, --- U.S. at ----, 114 S.Ct. at 2599 (Thomas, J., concurring) (size of voting district does not violate § 2)). "The Plaintiffs would have the court assume 'that members of the racial group must think alike and that their interests are so distinct that the group must be provided a separate body of representatives in the legislature to voice its unique point of view.' " *Id.* (quoting *Holder*, --- U.S. at ----, 114 S.Ct. at 2599). Surely, all voting rights cases are premised on minority status and, necessarily, seek some "special" treatment of minority voters shown to have been denied that

guarantee. Eliminating poll taxes, literacy tests, and multimember districting schemes which submerged minority voters in majority populations perhaps were the easier remedies. In this new round, the challenge has turned to single member districts drawn to remedy **[p. 1327]** minority vote dilution which ostensibly balkanize minority and majority populations in alleged violation of the Fourteenth Amendment.

At this point, we must digress from the immediate resolution of this case to the Supreme Court's most recent guidance to address two of the district court's concerns and preempt the argument, based on these recent cases, that any remedy here may unwittingly violate the Equal Protection Clause. Despite this apparent detour, we shall return to the substance of plaintiffs' claim: a fair opportunity to elect representatives of their choice.

On the one hand, adherence to *Gingles* to remedy violations of § 2 necessarily implicates race. On the other hand, how closely that remedy comes to triggering "the Court's equal protection angst" seems to arise when a constitutional line is drawn "at cartographic departures from 'traditional districting principles.' " S. Issacharoff, The Constitutional Contours of Race and Politics, 1995 S.Ct. Rev. 45, 47 (1996). The latest round of Supreme Court cases from *Miller v. Johnson*, --- U.S. ----, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995), to *Shaw I*, *Shaw II*, and *Bush* scrutinizes these outer limits of race-based districts where § 5 of the VRA mandated a cure which the Court then found violated the Equal Protection Clause. Upon this new terrain, *Gingles* retains viability to determine the § 2 violation, but, once found, *Shaw II* and *Bush* teach us that race cannot *override* all other traditional districting principles any more than reasonably necessary to remedy the violation.

In each of the recent cases, the proposed district's bizarre shape triggered strict scrutiny, unmistakably suggesting that race was the legislature's predominant consideration in redistricting. *Miller*, --- U.S. at ----, 115 S.Ct. at 2488. In *Miller*, the newly created Eleventh District was geographically "a monstrosity, stretching from Atlanta to Savannah." --- U.S. at ----, 115 S.Ct. at 2484. However, "[s]hape is relevant not because bizarreness is a necessary element of the constitutional wrong or threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." *Id.* at ----, 115 S.Ct. at 2486. Consequently, to satisfy the strict scrutiny the Eleventh District triggered, the Court held, "the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Id.* at ----, 115 S.Ct. at 2490. *Miller* left open the question whether compliance with the VRA, "standing alone, can provide a compelling interest independent of any interest in remedying past discrimination." *Id.* at ---- - ----, 115 S.Ct. at 2490-91. However, "under a correct reading of the statute," *id.* at ----, 115 S.Ct. at 2491, the proposed district was not required.

Bush answered the question left open in *Miller*. In her separate concurrence, in which four Justices joined, Justice O'Connor announced, "compliance with the results test of § 2 of the Voting Rights Act (VRA) is a compelling state interest." --- U.S. at ----, 116 S.Ct. at 1968. As we noted, in Colorado, compliance with the VRA falls second only to the one person, one vote requirement and precedes all traditional districting concerns. Consequently, if a § 2 violation is found, Colorado has a compelling state interest in seeking a remedy tailored by its traditional districting principles.

It is now a given that shape triggers strict scrutiny, and in this case the State argued, and the district court agreed, plaintiffs' proposed alternative district was not geographically compact. In a vote dilution case, once plaintiffs have established the second and third *Gingles*' preconditions, the *Gingles*' compactness requirement is the entry into the narrow tailoring question. If the state has a compelling interest in avoiding § 2 liability and if the minority population is concentrated enough to form a majority minority district, the state must "tailor its districts narrowly to serve that interest." *Id.* at ----, 116 S.Ct. at 1971 (Kennedy, J., concurring). Although Justice O'Connor concluded § 2 does not require a non-compact majority-minority district, Justice Kennedy observed, "neither does [§ 2] forbid it, provided that the rationale for creating it is proper in the first instance. Districts not drawn for impermissible reasons or according to imper-**[p. 1328]**missible criteria may take any shape, even a bizarre one." *Id.* at ----, 116 S.Ct. at 1972.

Justice O'Connor clarified the contours of proof necessary for a state to have a compelling interest in remedying discrimination under § 2. Two conditions, Justice O'Connor wrote, must be satisfied: "First, the discrimination that the State seeks to remedy must be specific, identified discrimination; second, the State must have had a strong basis in evidence to conclude that remedial action was necessary, before it embarks on an affirmative action program." *Id.* at ---- - ----, 116 S.Ct. at 1962-63 (citation omitted) (internal quotations omitted). For purposes of proof, Justice O'Connor accepted as valid a claim of vote dilution caused by racial bloc voting for the state's § 2 compliance defense. *Id.*

The factual predicates for these recent cases cannot be ignored. In each challenged district, voters were grouped *solely* on the basis of race, even when the district didn't

address the precise violation found, *Shaw II*, when geographical and political boundaries were ignored, *Shaw II* (district followed interstate highway); and *Bush* (district fragmented precincts and neighborhoods). In each instance, the individuals were selected solely on the basis of their race, raising the specter of a new genre of political apartheid.[40] In our case, plaintiffs' proposed alternative district attempted to bring together Hispanic voters who also live in geographically connected areas that share the same agricultural and rural communities of interest, along with various socioeconomic concerns. Thus, although race figures in the configuration of the proposed alternative Hispanic majority district, it is not "in substantial disregard of customary and traditional districting practices." *Miller*, --- U.S. at ----, 115 S.Ct. at 2497 (O'Connor, J., concurring). Moreover, Justice O'Connor acknowledged "the nature of the expressive harms with which we are dealing, and the complexity of the districting process, are such that bright-line rules are not available." *Bush*, --- U.S. at ----, 116 S.Ct. at 1964.

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[40] In *Bush*, the Court quoted the district court's finding:

> For the sake of maintaining or winning seats in the House of Representatives, Congressmen or would-be Congressmen shed hostile groups and potential opponents by fencing them out of their districts. The Legislature obligingly carved out districts of apparent supporters of incumbents, as suggested by the incumbents, and then added appendages to connect their residences to those districts. The final result seems not one in which the people select their representatives, but in which the representatives have selected the people.

--- U.S. at ----, 116 S.Ct. at 1954 (quoting *Vera v. Richards*, 861 F.Supp. 1304, 1334 (S.D.Tex.1994)) (citations and footnotes omitted).

[14, 15] *Miller* and its progeny, thus, offer a solution for remedying a found violation. Four principles emerge from these cases which sharpen the focus on the existing alleged violation. First, redistricting in which racial concerns predominate, done even for remedial purposes, is subject to strict scrutiny. Second, compliance with § 2 of the VRA constitutes a compelling governmental interest. Third, the discrimination the state seeks to remedy must be specific. Fourth, the state must have a strong basis in evidence to conclude the *Gingles* ' preconditions exist to justify the redistricting as reasonably necessary to comply with § 2. Fifth, states may intentionally create majority-minority districts and otherwise take race into consideration without coming under strict scrutiny so long as traditional districting criteria are not subordinated. *Id.* at ----, 116 S.Ct. at 1969.

In response to our order to the parties to address these latest cases, plaintiffs rely upon Justice Kennedy's statement the compactness requirement refers "to the compactness of the minority population, not to the compactness of the contested district". *Id.* at ----, 116 S.Ct. at 1971. Plaintiffs urge the distinction was lost on the district court which superimposed the shape of the proposed alternative district exclusively and ignored the size and compactness of the Hispanic population in south central Colorado. Plaintiffs insist the *Bush* plurality would permit even a bizarrely shaped district that is narrowly tailored to fit the found VRA violation. The State reads these recent cases to underline the correctness of the district court's order.

As we earlier discussed, the district court's definition of geographically compact was too **[p. 1329]** limited and did not incorporate the notion of compactness of the minority population itself, not simply the area enclosing them. Second, in deciding whether any remedy was available, the district court diffused the compactness inquiry with concerns

over impacting adjacent districts. While it cannot be gainsaid that increasing the minority population in one area will necessarily extract minority population from another, "without this phenomenon, no majority-[minority] districts would ever be created." *Clark*, 21 F.3d at 95; *Houston v. Lafayette County, Miss.*, 56 F.3d at 610-11. In fact, no county in south central Colorado including the Valley, Pueblo, and Trinidad, emerged after the 1992 redistricting with an Hispanic voting age majority population.[41] In any event, the concern is better addressed to the remedial phase of this litigation in which the State must have the first opportunity to draw HD 60.

Again, because plaintiffs sought only to establish the *possibility* of an alternative district, we do not linger on its specifics, the counties and cities it splits, or the mathematical scores it generates. "Districting plans are integrated bundles of compromises, deals, and principles ... representing an array of values, some relatively neutral, some intensely partisan." *Expressive Harms*, 585. At this stage, it remains academic to compare the proposed alternative to other oddly shaped or unusually large districts in Colorado. Suffice we recognize the proposed alternative evidences none of the extreme bizarreness of any of the districts that offended the Court and leave the drawing of boundaries to the area of politics in which it belongs.

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[41] In adjacent HD 46, which includes part of Pueblo with its large Hispanic population, Representative Gilbert Romero, has been elected five times to the General Assembly, running in each general election unopposed. The other adjacent district, HD 47, is represented by Mike Salaz, a Republican who has won reelection, and is not considered the Hispanic candidate of choice.

X. Conclusion

The "expressive harms" plaintiffs have alleged cannot be recast as political balkanization, as the district court decried, especially in light of the Supreme Court's directive that compliance with § 2 is a compelling state interest. Plaintiffs, instead, availed themselves of the protections of § 2, seeking to establish they do not presently have the same *fair*Y opportunity to elect representatives of their choice to the General Assembly. Their proof echoed what the State's redistricting Commission considered before it drew the currently complained of district. They further established under the totality of circumstances racial polarization drives the voting community in HD 60 despite limited local success in being elected or appointed to political office. Consequently, plaintiffs have satisfied the two conditions necessary for the State to have a compelling interest to remedy their § 2 claim. Although we conclude the district court incorrectly applied the governing law, nonetheless, we recognize Congress has handed to the courts the task of interpreting and applying a law which appears deceptively simple. Yet, that law is exasperatingly complex, requiring application of principles and concepts drawn from disciplines foreign to most judges. Therefore, criticism is not to be leveled at anyone who conscientiously attempts to come to grips with the monumental and salutary task given to us. We must, however, **REVERSE** the judgment and **REMAND** the case to the district court with directions to order the State to implement a remedial plan of redistricting consistent with this opinion and the dictates of § 2.

APPENDIX B

Jennie SANCHEZ, Adeline Sanchez, and Debra Casanova, Plaintiffs,

v.

The STATE OF COLORADO and Natalie Meyer, in her official capacity as Secretary of State for the State of Colorado, Defendants.

Civ. A. No. 93-S-0963.

United States District Court, D. Colorado.

Aug. 31, 1994.

* * *

[p. 1519] MEMORANDUM OPINION AND ORDER

SPARR, District Judge.

THIS MATTER came before the court for trial on March 21, 1994 through March 25, 1994. The court heard final argument on June 8, 1994. Having reviewed all of the evidence, the arguments, and the applicable law, and being fully advised in the premises, the court finds and concludes as follows.

The Plaintiffs bring a single claim for relief for violation of § 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973. Plaintiffs allege that District 60 of the Colorado House of Representatives (H.D. 60), as it is

currently configured, violates § 2 by unlawfully diluting the voting strength of Hispanic citizens in South Central Colorado. Plaintiffs ask the court to: (1) declare that H.D. 60 violates § 2; (2) grant a permanent injunction preventing any further elections for representative to the Colorado General Assembly from H.D. 60 as it is presently configured; (3) order the adoption of a redistricted H.D. 60 that contains a majority Hispanic voting age population; and (4) award Plaintiffs their fees and costs.

A. *Background*

In 1992, pursuant to Colorado's reapportionment process set forth in Article V, § 48 of the Colorado Constitution, the Colorado Reapportionment Commission devised H.D. 60 as presently drawn. H.D. 60 is comprised of Alamosa, Conejos, Costilla, Huerfano, Mineral, Rio Grande, and Saguache counties, plus the portion of Las Animas that is west of Trinidad. All of these counties, except Huerfano and Las Animas, are considered to be in the San Luis Valley (the Valley). Hispanics are estimated to comprise 45.31% of the total population and 42.38% of the voting age population of H.D. 60. The 1992 redistricting increased the total Hispanic voting age population in H.D. 60 by approximately five percent (5%).

In 1991 and 1992, Colorado's Reapportionment Commission conducted meetings and hearings, heard extensive presentations, and compiled substantial reports regarding the redistricting of South Central Colorado and H.D. 60. (Plaintiffs' Exhibits 9-20, 30, 33, 34, 47, 72, 83, 86, 87, 92, 93; Defendants' Exhibits F1, F2, F3, G, H, I, J, K, L, L1-L6). The testimony at the hearings favored preserving the Valley intact and disapproved splitting the Valley in order to increase the percentage of Hispanic voters. (*See* Plaintiffs' Exhibits 14, 15, 16 and Defendants' Exhibits H, I, J, L4). Testimony at the hearings revealed

that Hispanics in the Valley have different political interests than Hispanic voters outside the Valley. There was no suggestion to the Commission that an Hispanic community of interest existed between the Valley, Pueblo, and Trinidad. After extensive consideration, the Commission identified certain specific goals for redistricting the southern central part of the State, among others: (1) preserving the Valley in a single house district; (2) separating the Valley from western slope districts; (3) preserving Pueblo West in a single house district; and (4) preserving Huerfano and Las Animas counties in a house district extending east, not west. (*See* Plaintiffs' Exhibit 17, p. 1.). The plan ultimately adopted by the Reapportionment Commission was upheld by the Colorado Supreme Court, over a challenge to H.D. 60 by two of these same Plaintiffs. *In re Colorado General Assembly*, 828 P.2d 185, 193 (Colo.1992). Plaintiffs now allege that the drawing of the present H.D. 60 violates § 2 of the Voting Rights Act by diluting Hispanic votes in South Central Colorado.

B. *Legal Framework*

Because it is the domain of the States, and not the federal courts, to conduct apportionment in the first place, federal courts are barred from intervening in state apportionment in the absence of a violation of federal law. *Voinovich v. Quilter*, --- U.S. ----, **[p. 1520]** ---- - ----, 113 S.Ct. 1149, 1156-57, 122 L.Ed.2d 500 (1993). "[R]eapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." *Growe v. Emison*, 507 U.S. ----, ----, 113 S.Ct. 1075, 1081, 122 L.Ed.2d 388 (1993), citing *Chapman v. Meier*, 420 U.S. 1, 27, 95 S.Ct. 751, 766, 42 L.Ed.2d 766 (1975). Because the States do not derive their reapportionment authority from the Voting Rights Act, but rather from independent provisions of state and federal law, the federal

courts are bound to respect the States' apportionment choices unless those choices contravene federal requirements. *Voinovich*, --- U.S. at ----, 113 S.Ct. at 1157 (citations omitted).

In 1982, § 2 was amended to eliminate the need to prove discriminatory intent in order to prove a violation of § 2. *Thornburg v. Gingles*, 478 U.S. 30, 43-44, 106 S.Ct. 2752, 2762-2763, 92 L.Ed.2d 25 (1986). Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) [42 USCS § 1973(f)(2)], as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Hispanics are members of a class of citizens protected by § 1973(a). 42 U.S.C. § 1973f(2).

Section 2 claims are analyzed under a two-part framework. *Magnolia Bar Ass'n., Inc. v. Lee*, 994 F.2d 1143, 1146 (5th Cir.), *cert. denied*, --- U.S. ----, 114 S.Ct. 555, 126 L.Ed.2d 456 (1993). To prevail on a § 2 claim, the Plaintiffs must first satisfy certain threshold requirements set forth by the Supreme Court in *Gingles*, 478 U.S. at 30, 106 S.Ct. at 2752. *Lee*, 994 F.2d at 1146. Minority voters must then offer evidence of the totality of circumstances to demonstrate whether the challenged election practice "has resulted in the denial or abridgment of the right to vote based on color or race." *Lee*, 994 F.2d at 1146, citing *Chisom v. Roemer*, 501 U.S. 380, 393, 111 S.Ct. 2354, 2363, 115 L.Ed.2d 348 (1991).

[1, 2] A claim of vote dilution in a single member district requires proof meeting the same three threshold conditions for a dilution challenge to a multimember district. *Johnson v. DeGrandy*, --- U.S. ----, ---- - ----, 114 S.Ct. 2647, 2654-55, 129 L.Ed.2d 775 (1994), citing *Growe*, --- U.S. at ----, 113 S.Ct. at 1084; *Lee*, 994 F.2d at 1146. To satisfy the *Gingles* threshold inquiry, the minority group must prove by a preponderance of the evidence that: (1) it is sufficiently large and geographically compact to constitute a majority in a single member district; (2) it is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority group's preferred candidate. *DeGrandy*, --- U.S. at ---- - ----, 114 S.Ct. at 2654-55 (citations omitted); *Lee*, 994 F.2d at 1146, citing *Gingles*, 478 U.S. at 48-51, 106 S.Ct. at 2765-2767. The three threshold factors are "necessary preconditions" for establishing vote dilution. *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657, quoting *Gingles*, 478 U.S. at 50, 106 S.Ct. at

2766. If these *Gingles* threshold factors are not present, then the challenged electoral practice cannot be considered as the cause of the minority's inability to elect its preferred candidate. *Sanchez v. Bond*, 875 **[p. 1521]** F.2d 1488, 1492 (10th Cir.1989), *cert. denied*, 498 U.S. 937, 111 S.Ct. 340, 112 L.Ed.2d 305 (1990), citing *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766. Failure to establish any one of the *Gingles* factors precludes a § 2 violation. *Growe*, --- U.S. at ----, 113 S.Ct. at 1084; *Lee*, 994 F.2d at 1146, citing *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766.

[3] Because Congress intended the ultimate conclusions about equality or inequality of political opportunity to rest on "comprehensive, not limited, canvassing of relevant facts," the three *Gingles* preconditions may not be isolated as sufficient, standing alone, to prove vote dilution. *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657. Once the minority group satisfies the *Gingles* threshold inquiry, it must then offer evidence of the totality of circumstances demonstrating that the minority group has "less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice." *Lee*, 994 F.2d at 1146, citing 42 U.S.C. § 1973(b).

[4] The Senate Report accompanying the 1982 amendments to § 2 listed several factors that may be relevant to the totality of circumstances inquiry in a § 2 claim:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, vote, or otherwise to participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction;

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Sanchez, 875 F.2d at 1491-92, citing S.Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07. In applying these factors, the court should keep certain additional considerations in mind: (1) that the list is exemplary, not exclusive--the court may consider any relevant factors in reaching its conclusion; (2) that there is no requirement that any particular number of factors be proved or that a majority of them point one way or the other; and (3) that whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality and upon a functional view of the political process. *Sanchez*, 875 F.2d at 1492, citing *Gingles*, 478 U.S. at 46, 106 S.Ct. at 2764. Loss of political power through vote dilution is distinct from the mere ability to win a particular election. *Whitcomb v. Chavis*, 403 U.S. 124, 153, 91 S.Ct. 1858, 1873, 29 L.Ed.2d 363 (1971). Ultimately, a district court can find a § 2 violation only if, "in the particular situation, the [challenged] practice operate[s] to deny the minority plaintiff[s] an equal opportunity to participate [in the political process] and to elect candidates of their choice." *Lee*, 994 F.2d at 1147, citing S.Rep. No. 417, 97th Cong., 2d Sess. at 30; 1982 U.S.C.C.A.N. at 207.

[p. 1522] The court must be careful not to overemphasize the relative importance of the three *Gingles* factors and of historical discrimination, when measured against evidence tending to show that in spite of these facts, minority voters have an equal measure of political and electoral opportunity. *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2658. A conclusion of lack of equal electoral opportunity "must still be addressed explicitly, without isolating any other arguably relevant facts from the act of judgment." *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657. The probative significance of the *Gingles* factors must be critically assessed after considering further circumstances with arguable bearing on

the issue of equal political opportunity. *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2658. Proof of the three *Gingles* factors is not enough "if other considerations show that the minority has an undiminished right to participate in the political process." *DeGrandy*, --- U.S. at ---- n. 10, 114 S.Ct. at 2657 n. 10, quoting *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 359 (7th Cir.1992), *cert. denied*, --- U.S. ----, 113 S.Ct. 2334, 124 L.Ed.2d 246 (1993) ("other considerations" included the fact that while the four at-large City-County Council seats tended to go to Republicans, one of the Republicans elected was black). "As facts beyond the ambit of the three *Gingles* factors loom correspondingly larger, factfinders cannot rest uncritically on assumptions about the force of the *Gingles* factors in pointing to dilution." *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2658.

C. *Analysis*

1. The First *Gingles* Factor: Geographical Compactness of Minority Group

[5] First, the burden of proving the *Gingles* preconditions rests "squarely on the plaintiff's shoulders." *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F.Supp. 1022, 1045 (D.Md.1994), quoting *Voinovich*, --- U.S. at ----, 113 S.Ct. at 1156. Second, the compactness requirement is not a trivial concept. Where a minority group is not large enough, geographically concentrated enough, or politically cohesive enough to constitute a voting majority in a single member district, a claim for vote dilution fails. *Gingles*, 478 U.S. at 90, 106 S.Ct. at 2787 (O'Connor, J., concurring). A showing of geographical compactness is a threshold matter because, unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have

been injured by the structure or practice. *Garza v. County of Los Angeles*, 756 F.Supp. 1298, 1344 (C.D.Cal.1990), citing *Gingles*, 478 U.S. at 50 n. 17, 106 S.Ct. at 2766 n. 17 (emphasis in original).

The Plaintiffs say they have shown that "it is possible to draw a majority-Hispanic House district which unites significant Hispanic population concentrations in the San Luis Valley and Pueblo and Las Animas counties." (Plaintiffs' Post-Trial Memorandum p. 51). Plaintiffs' statistical expert, Dr. Bardwell, developed three alternative State House districts with Hispanic voting age populations of 50.03%, 51.6%, and 54.8%. The Plaintiffs concentrated on the proposed 50.03% alternative H.D. 60. The first *Gingles* precondition requires the court to determine whether the Hispanic population within the Plaintiffs' proposed alternative H.D. 60 is sufficiently large and geographically compact to constitute a majority in that district.

[6] While the Plaintiffs are not required to provide a final redistricting plan for remedial purposes, the burden is on the Plaintiffs to prove that Hispanics are sufficiently numerous and geographically compact to constitute a majority in an alternative district. It is appropriate to consider the size and geographic compactness of the minority group within a reasonable alternative district as a benchmark against which to measure the existing district that is being challenged as dilutive. *See Holder v. Hall*, --- U.S. ----, ---- - ----, 114 S.Ct. 2581, 2585-86, 129 L.Ed.2d 687 (1994).

[7] Several principles guide the court in its comparison of the proposed alternative H.D. 60 and the challenged present H.D. 60. First, courts should be reluctant to order the creation of districts of "bizarre" or "dramatically irregular" shape. *Marylanders*, 849 F.Supp. at 1053, quoting *Shaw v. Reno*, --- **[p. 1523]** U.S. ----, ----, ----, ----, 113 S.Ct. 2816,

2820, 2825, 2831, 125 L.Ed.2d 511 (1993). Courts should pay attention to both geometric and substantive criteria when testing for compactness under *Gingles*. *Marylanders*, 849 F.Supp. at 1053. The Plaintiffs need not establish that the minority population is compact in an absolute or aesthetic sense; they need only establish that it is "sufficiently ... compact" to show that a majority Hispanic district is feasible. *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766.

Second, although a state can, and at times must, place great weight on race when redistricting, it may not do so to the exclusion of all traditional, nonracial districting principles, leaving a district that rationally can be understood only as "an effort to classify and separate voters by race." *Marylanders*, 849 F.Supp. at 1053, quoting *Shaw*, --- U.S. at ----, 113 S.Ct. at 2828. Although no Fourteenth or Fifteenth Amendment claims are now before the court, it is necessary to bear in mind that redistricting must comply with the overriding demands of the Equal Protection Clause. *DeGrandy*, --- U.S. at ---- - ----, 114 S.Ct. at 2666-67 (Kennedy, J., concurring). " '[A] reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race' must be subject to strict scrutiny under the Equal Protection Clause." *Id.* --- U.S. at ----, 114 S.Ct. at 2667, quoting *Shaw*, --- U.S: at ----, 113 S.Ct. at 2832. "Racial classifications 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality,' and are presumed invalid." *Id.* --- U.S. at ----, 114 S.Ct. at 2666, quoting *Shaw*, --- U.S. at ----, ----, 113 S.Ct. at 2816, 2818. "This is true regardless of 'the race of those burdened or benefited by a particular classification.' " *Id.*, --- U.S. at ----, 114 S.Ct. at 2666, quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 494, 109 S.Ct. 706, 722, 102 L.Ed.2d 854 (1989). "Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial

factions; it threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Id.* --- U.S. at ----, 114 S.Ct. at 2666, quoting *Shaw*, --- U.S. at ----, 113 S.Ct. at 2832. "A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." *Shaw v. Reno*, --- U.S. ----, ----, 113 S.Ct. 2816, 2827, 125 L.Ed.2d 511 (1993).

The court is also guided by the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Colorado Constitution, art. V, §§ 46-47. Colorado's 1992 reapportionment plan (including H.D. 60) was required to be consistent with six parameters in order of importance: (1) the Fourteenth Amendment Equal Protection Clause and the Fifteenth Amendment; (2) § 2 of the Voting Rights Act; (3) the Colo. Const. art. V, § 46, requiring equality of population in each house district; (4) the Colo. Const. art. V, § 47(2), requiring that districts not cross county lines except to meet § 46 requirements and requiring that the number of cities and towns contained in more than one district be minimized; (5) the Colo. Const. art. V, § 47(1), requiring each district to be as compact as possible and to consist of contiguous whole general election precincts; and (6) the Colo. Const. art. V, § 47(3), requiring preservation of

communities of interest within a district.[1] *In re Colorado General Assembly*, 828 P.2d at 190.

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[1] Colo. Const. art. V, § 46 provides:

> **Senatorial and representative districts.** The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.

Colo. Const. art. V, § 47 provides:

> (1) Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.
>
> (2) Except when necessary to meet the equal population requirements of section 46, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law.
>
> (3) Consistent with the provisions of this section and section 46 of this article, communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible.

[p. 1524] *a. Is the Hispanic population sufficiently large and geographically compact to constitute a majority in the Plaintiffs' proposed H.D. 60?*

The Valley is geographically unique. It is surrounded by the Sangre de Cristo mountains to the east, the La Garita mountains and Cochetopa Hills to the north, and the San Juan mountains to the west. Access to the Valley is primarily by way of La Veta Pass on U.S. Highway 160 to the east, Wolf Creek Pass on U.S. Highway 160 to the west, Poncha Pass on U.S. Highway 285 to the north, and San Antonio Mountain on U.S. Highway 285 to the south. At 8,194 square miles, the Valley is the largest intermountain valley in the world. Alamosa is the largest city with a 1992 population of 7,892 and Monta Vista the second largest with 4,621. Alamosa is the recognized growth center and has the most retail trade and services activity, while Monte Vista is the agribusiness center. Alamosa is the banking, education, and health care hub of the Valley. (Testimony of Juan Gomez, Defendants' Exhibits V, W, Y, and 2K).

Approximately 58% of the Valley's floor is used as rangeland, 25% as cropland, and 11% as pastureland. Approximately 57.4% of the Valley is managed by the federal government, 3.9% is State land, and 38.5% is privately owned. Federal presence is greatest in Mineral and Saguache counties and private ownership is greatest in Costilla and Alamosa counties. The Valley's agricultural economy is dependent upon irrigation, leaving the Valley with unique water needs. Surface water supply comes from snowmelt into the Rio Grande and Conejos Rivers. Another major source of water is the extensive underground aquifer system underlying the Valley floor. (Defendants' Exhibits 2I and 2K).

Agriculture and agribusiness are the Valley's major export industries and comprise approximately 27.3% of the

Valley's economy. The Valley is the nation's fifth largest potato growing region. In 1991, Valley potato production represented 92.1% of Colorado's potato crop. Most labor in the Valley is used for agricultural production and packing operations. (Defendants' Exhibit 2K).

The Valley was settled on Mexican land grants by Hispanos, Spanish-speaking people from New Mexico who considered themselves to be of Spanish, not Mexican, descent. Pueblo was not part of the "Hispano Homeland" and was settled after the Valley. (Plaintiffs' Exhibits 64, 103). Hispanics in the Valley share a common Spanish colonial cultural and religious heritage which continues to value the extended family. While the majority of Hispanics in the Valley are Catholic, many Hispanics are affiliated with various protestant churches. Catholic parishes and parishioners maintain their independence from the Pueblo Diocese of which they are members. (Defendants' Exhibit V).

Pueblo is located on I-25, approximately 120 miles from Alamosa. Most of the communities in the Valley do not receive radio and television communications from Pueblo. Pueblo is a long distance telephone call from the Valley. Pueblo and the Valley each have their own colleges. In 1990, Pueblo was the fifth largest city in Colorado, with a population of 98,640. The age composition of Pueblo has undergone significant change, resulting in an increased proportion of the elderly population. Approximately 40% of Pueblo's population is Hispanic, but the distribution is not uniform or homogeneous. Pueblo has experienced an increasing crime rate and Pueblo constituents are concerned with issues of crime and gangs. (Defendants' Exhibits V and 2M).

[p. 1525] Hispanos who later settled in Pueblo moved from a rural, agricultural lifestyle to an urban, wage and

labor lifestyle. The Valley remains a primarily agriculturally-based economy, while Pueblo retains an industrially-based economy. In 1990, approximately 70% of the Valley's population was classified as rural. Only about 1.1% of Pueblo's economy is based on agriculture. As reflected by the 1990 Census, the socioeconomic status of Hispanics in the Valley is generally lower than that of Hispanics living in Pueblo and Trinidad. Pueblo has endured significant erosion of its industrial base, but has become successful in attracting new, cleaner, light industry and creating new economic development. (Testimony of Representative Romero; Defendants' Exhibits V, W, and Y).

Judged by the principles of contiguity, preservation of communities of interest, and minimizing the splitting of counties and municipalities, the proposed alternative H.D. 60 is not compact. First, the Plaintiffs' proposed alternative H.D. 60 does not score well on mathematical tests for compactness. (*See* Defendants' Exhibits 2C, 2E pp. 6-7 for explanation of mathematical test methods). H.D. 60 has the largest total perimeter of any current Colorado House district. It scores the lowest on the Schwartzburg test of any district in Colorado, with a score of 3.3736, significantly below the next lowest score in the State. It scores fourth lowest in the State on the Reock test, with a score of 25.47. Judged by mathematical tests for compactness, the proposed alternative H.D. 60 is not compact. (*See* Defendants' Exhibits 2E pp. 6-7, 2F, 2G).

Second, the current H.D. 60 splits only one county and no municipalities. The Plaintiffs' alternative H.D. 60 splits all seven counties in its proposed district (Saguache, Alamosa, Conejos, Costilla, Rio Grande, Las Animas, and Pueblo), three cities (Alamosa, Trinidad, and Pueblo), and some Pueblo precincts. (Defendants' Exhibits 2R, 2U, 2Y, and 2Z). Plaintiff's proposed alternative H.D. 60 cuts

across county lines, municipal boundaries, precinct boundaries, political boundaries, and communities.

Third, "communities of interest" represent distinctive units that share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socioeconomic status, or trade. *Carstens v. Lamm*, 543 F.Supp. 68, 91 (D.Colo.1982). The Valley is home to the San Luis Valley County Commissioners Association, Peace Officers' Association, and Bar Association. The Valley comprises a single judicial district, has a centralized law enforcement system, and Valley residents almost unanimously opposed the AWDI water development project. The Plaintiffs' proposed H.D. 60 splits the Valley, an identifiable community of interest.

Fourth, the Plaintiffs' proposed H.D. 60 is not contiguous. A district qualifies as contiguous if every part of the district is reachable from every other part without crossing the district boundary, *i.e.*, the district is not divided into two or more discrete pieces. Grofman, Bernard, *Criteria for Districting*, 33 UCLA L.Rev. 77, 84 (1985). A resident of the proposed H.D. 60 would be required to travel outside the district to get from the Valley to Pueblo.

Fifth, the proposed H.D. 60 would erode the number of political offices held by Hispanics in the Valley and in the adjacent districts. The districts of Representatives Salaz and Romero would necessarily contain fewer Hispanic voters. Representatives Salaz and Romero presently receive substantial political support from Hispanics. Sheriff Medina would be precluded from running for reelection for his current office as Sheriff of Rio Grande County because his residence is not in the proposed alternative H.D. 60.

Sixth, the Plaintiffs' proposed H.D. 60 would impede effective political representation. (Testimony of Representative Romero, Representative Salaz, Representative Entz, Sheriff Medina, and Selso Lopez). House Representatives Romero, Salaz, and Entz expressed concern about: (1) the difficulty of meeting with constituents in such a large, geographically dispersed district, (2) the possibility that the Valley could be represented by someone not from the Valley and Pueblo could be represented by someone not from Pueblo, and (3) the risk that Hispanic repre-**[p. 1526]**sentation could be significantly reduced in the adjacent House districts (H.D. 47 has had a Hispanic representative for more than ten years; Representative Romero has represented H.D. 46 for 5 terms (*see* Plaintiffs' Exhibit 8)). The current Representatives expressed concern that Pueblo's more urbanized interests could actually be at odds with the Valley's more agricultural interests.

[8] Based on all of the above considerations, the court concludes that the Plaintiffs cannot meet their burden of proving the first *Gingles* precondition to a § 2 challenge: that the minority group is sufficiently large and compact such that a majority Hispanic district is feasible. The Plaintiffs' proposed H.D. 60 would split the Valley, diluting the political power of the Valley as a whole and Hispanics' political power within the Valley. The Plaintiffs' proposed H.D. 60 would pit the political interests of Pueblo residents against the political interests of Valley residents. Hispanics in the Plaintiffs' proposed alternative H.D. 60 do not all have the same economic, political, and social interests. The proposed alternative H.D. 60 would impede effective representation for all Hispanics in South Central Colorado.

Because the Plaintiffs have not established the first of the three "necessary preconditions" from *Gingles*, the court need go no further in its analysis. *See DeGrandy*, --- U.S.

at ----, 114 S.Ct. at 2657, quoting *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766; *Sanchez*, 875 F.2d at 1492, citing *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766. In the absence of a showing that the minority group is sufficiently large and geographically compact to constitute a majority in a single member district, the minority voters' inability to elect their preferred candidate cannot constitute a violation of § 2. *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657; *Growe*, 507 U.S. at ----, 113 S.Ct. at 1084; *Lee*, 994 F.2d at 1146, citing *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766. However, in the interests of judicial economy, the court will address the second and third *Gingles* preconditions and the totality of the circumstances inquiry.

2. The Second and Third *Gingles* Factors: Political Cohesiveness of Minority Group and Racial Bloc Voting

[9] The purpose of inquiring into the existence of racially polarized voting is twofold: (1) to ascertain whether minority group members constitute a politically cohesive unit, and (2) to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates. *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769 (citation omitted). Thus, the question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769. The Supreme Court has unanimously reaffirmed that minority-group political cohesion and racial bloc voting never can be assumed, but specifically must be proved in each case in order to establish that a redistricting plan dilutes minority voting strength in violation of § 2. *Shaw*, --- U.S. at ----, 113 S.Ct. at 2830, citing *Growe*, 507 U.S. ----, ----, 113 S.Ct. 1075, 1076, 122 L.Ed.2d 388 (1993); *Sanchez*, 875 F.2d at 1492, citing *Gingles*, 478 U.S. at 45-46, 106 S.Ct. at 2763-2764.

[10, 11] Racially polarized voting exists when there is a consistent relationship between the race of the voter and the way in which the voter votes or, in other words, where minority voters and white voters vote differently. *Sanchez*, 875 F.2d at 1493, citing *Gingles*, 478 U.S. at 53 n. 21, 62-63, 106 S.Ct. at 2768 n. 21, 2772-2773. The race of the candidate *per se* is irrelevant to a racial bloc voting analysis. Under § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important. *Gingles*, 478 U.S. at 67-68, 106 S.Ct. at 2774-2775 (emphasis in original). Nothing in § 2 indicates that the chosen representative of a minority group must be a minority. *Sanchez*, 875 F.2d at 1495. The Plaintiffs must prove on an election-by-election basis, by a preponderance of the evidence, which candidates are minority-preferred. *Jenkins v. Red Clay Consolidated School District Board of Education*, 4 F.3d 1103, 1126 (3d Cir.1993), *cert. denied*, --- U.S. ----, 114 **[p. 1527]** S.Ct. 2779, 129 L.Ed.2d 891 (1994) (citation omitted).

[12, 13] Legally significant white bloc voting occurs where, in the absence of special circumstances, the white bloc vote normally will defeat the combined strength of minority votes plus white "crossover" votes. *Gingles*, 478 U.S. at 51, 106 S.Ct. at 2766; *Sanchez*, 875 F.2d at 1492, citing *Gingles*, 478 U.S. at 50-51, 106 S.Ct. at 2766-2767. The degree of racial bloc voting that is cognizable as an element of a § 2 vote dilution claim will vary according to a variety of factual circumstances, so there is no simple doctrinal test for the existence of legally significant racial bloc voting. The amount of white bloc voting that can generally "minimize or cancel" minority voters' ability to elect representatives of their choice will vary from district to district according to a number of factors, including: (1) the nature of the allegedly dilutive electoral mechanism; (2) the presence or absence of other potentially dilutive electoral

devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting; (3) the percentage of registered voters in the district who are members of the minority group; and (4) the size of the district. *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769.

[14] The Plaintiffs argue that, in determining whether in fact the minority group votes cohesively, court may not consider the reasons why minority voters may vote alike, citing *Sanchez*, 875 F.2d at 1493. The Plaintiffs asserted repeatedly at trial that the court may not consider any factors other than the race of the voter and the selection of certain candidates in determining whether racially polarized voting exists. However, the court believes it is permitted to undertake the additional inquiry into the reasons for, or causes of, voting behavior. *See DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657; *League of Latin American Citizens v. Clements (LULAC)*, 999 F.2d 831, 853-54 (5th Cir.1993), *cert. denied*, --- U.S. ----, 114 S.Ct. 878, 127 L.Ed.2d 74 (1994). The Court in *DeGrandy* directs that lack of equal electoral opportunity under § 2 must "be addressed explicitly, without isolating any other arguably relevant facts from the act of judgment." --- U.S. at ----, 114 S.Ct. at 2657. "The ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts." *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657. *DeGrandy* requires consideration of "comprehensive, not limited facts" that are "arguably relevant." --- U.S. at ----, 114 S.Ct. at 2657. Under the reasoning of *DeGrandy*, this court believes it is permitted to examine any "arguably relevant" reasons for voting behavior. --- U.S. at ----, 114 S.Ct. at 2657. Accordingly, without "explaining away" racial bloc voting with any one reason for voting behavior, *see Sanchez*, 875 F.2d at 1493, the court will not restrict its examination to Dr. Bardwell's bivariate analysis, but will

also consider Dr. Zax's multivariate analysis. *See (LULAC)*, 999 F.2d at 853-54.

Both the statistical evidence (Defendants' Exhibits S, T, and 2Q) and the lay witness testimony established that many factors influence voting behavior and electoral success in H.D. 60. Although the Plaintiffs assert that their only real candidate of choice must be a Hispanic Democrat, witnesses for both the Plaintiffs and the Defendants acknowledged that many different considerations influence their votes. There is substantial evidence that the following factors have influenced voting patterns in H.D. 60: (1) party affiliation of the candidate; (2) incumbency of the candidate; (3) the candidate's track record, if any, in political office; (4) the candidate's platform; (5) the candidate's name recognition in the Valley; (6) campaign strategy; (7) campaign finances; (8) effort put into campaigning and time spent campaigning door-to-door; (9) personal characteristics of the candidate, including qualifications, reputation, speaking ability, residence, family ties, gender, personal popularity, ethnicity, and visibility in the community; (10) identification of the candidate with past political scandals; and (11) the voter's ethnicity.

The evidence demonstrated that while Hispanics in H.D. 60 vote cohesively on some issues of particular universal interest, Hispanics vote differently on other issues and candidates. Approximately 20% of Hispanics **[p. 1528]** in H.D. 60 are registered as Republicans and 80% as Democrats. Approximately 56% of Anglos in H.D. 60 are registered as Republicans and 44% are registered as Democrats. Approximately 16% of the voters in H.D. 60 are registered Independent. Numerous Hispanic Valley residents and voters testified that their political interests are not the same as the political interests of the Plaintiffs. Hispanics in the Valley cannot be classified as one distinct political group with the same political interests.

[15] The Colorado Reapportionment Commission relied on data that approximately 20% of Anglo voters in the Valley "cross over" to vote for the Hispanic candidate-of-choice. Dr. Bardwell estimated a white crossover vote of 13%-17%. Based on the Anglo crossover vote and all the evidence, statistical and anecdotal, the court concludes that the Plaintiffs have not proven that a legally significant white bloc vote normally defeats the combined strength of minority votes plus white "crossover" votes.

The court found other significant problems, flaws, and deficiencies in the Plaintiffs' statistical conclusions regarding Hispanic political cohesiveness and white bloc voting. But, the court need not explore those concerns in depth at this time. Under *DeGrandy*, even if the court assumes that the Plaintiffs have proved each and every one of the three *Gingles* preconditions, the court must go on to make a "totality of circumstances" determination. --- U.S. at ---- - ----, 114 S.Ct. at 2656-58.

3. The Totality of Circumstances Inquiry

[16] Throughout the trial, the Plaintiffs argued that it is almost impossible to lose a § 2 challenge on the totality of circumstances inquiry when the three *Gingles* preconditions have been met. The Supreme Court has stated otherwise in *DeGrandy*, --- U.S. at ---- - ----, 114 S.Ct. at 2656-58. *Gingles* "clearly declined" to hold the three preconditions sufficient in combination to prove a § 2 claim, "either in the sense that a court's examination of relevant circumstances was complete once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution." *DeGrandy*, --- U.S. at ----, 114 S.Ct. at 2657. Accordingly, the court must proceed to the "totality of circumstances" inquiry.

[17] Again, the Senate Report list of nine factors to consider is not exclusive--the court may consider any relevant factors in reaching its conclusion and no particular number of factors need be proved. *Sanchez*, 875 F.2d at 1492, citing *Gingles*, 478 U.S. at 46, 106 S.Ct. at 2764. Whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality and upon a functional view of the political process. *Sanchez*, 875 F.2d at 1492, citing *Gingles*, 478 U.S. at 46, 106 S.Ct. at 2764. A § 2 violation may be found only if the challenged practice operates to deny the minority plaintiffs an equal opportunity to participate in the political process and to elect candidates of their choice. *Lee*, 994 F.2d at 1147 (citation omitted).

a. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, vote, or otherwise to participate in the democratic process;

The evidence revealed that Hispanics in South Central Colorado, like many other ethnic groups in the United States, have experienced certain social, economic, and political effects of discrimination. The only evidence of "official" discrimination, however, involved activity by the Clerk and Recorder of Saguache County approximately eighteen years ago. The State properly pursued an investigation into his alleged activities and the situation was ultimately corrected. While the Plaintiffs perceived the English Only Amendment in 1988 to be based on discriminatory motives, the Amendment was soundly defeated by a solid coalition of Hispanic and Anglo voters. The only recent allegation of "official" discrimination involved the loss of some Hispanic voter registrations in approximately 1986. (Testimony of Jennie Sanchez).

b. the extent to which voting in the elections of the state or political subdivision is racially polarized;

When the Plaintiffs' allegations of racially polarized voting are evaluated by the multi-**[p. 1529]**variate analysis, the evidence reveals that, while ethnicity plays a role in voting behavior, it is only one of many other factors that contribute to voting behavior. Taking into account the problems with Dr. Bardwell's bivariate analysis (overly restrictive bivariate analysis, statistical bias, use of 1990 census data, type of races analyzed too narrowly defined, use of absentee ballots, underestimated impact of white crossover votes, failure to consider impact on adjacent districts, and the occurrence of impossible estimates, among others), the court is not convinced that the evidence specifically proves legally significant racially polarized voting in H.D. 60. (*See* part C. 2. of this Memorandum Opinion and Order).

c. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

The parties did not introduce any evidence as to this factor.

d. if there is a candidate slating process, whether the members of the minority have been denied access to that process;

The parties did not introduce any evidence as to this factor.

e. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health,

which hinder their ability to participate effectively in the political process;

According to the 1990 Census data, Anglos in the Valley have higher education and income levels than Hispanics, as well as lower unemployment and poverty rates than Hispanics. In the ten years between the 1980 Census and the 1990 Census, unemployment and poverty rates for Hispanics have remained stable, while unemployment and poverty rates for Anglos have increased. According to estimates, Hispanics in H.D. 60 turn out to vote at rates only slightly less (1%) than non-Hispanics. (Testimony of Dr. Bardwell). Hispanic voter registration is virtually equal to Anglo voter registration. Hispanic voter turnout in H.D. 60 is substantial; equivalent to Anglo voter turnout rates statewide and twice as high as Hispanic voter turnout rates statewide.

Many Hispanic long-time residents of the Valley testified at the trial that H.D. 60 does not dilute Hispanic voting power. They testified that, while racial discrimination was more prevalent in the Valley in the past, today Hispanics have equal access to education, jobs, and loans. Hispanics are teachers, business owners, elected officials, and party officials. The Plaintiffs themselves have been successful in establishing convenient voter registration hours and in substantially increasing Hispanic voter registration and turnout. Even assuming that Hispanics in the Valley have borne the effects of past socioeconomic disparities, the evidence demonstrates that any past discrimination does not significantly impede Hispanics' ability today to participate effectively in the political process in H.D. 60.

f. whether political campaigns have been characterized by overt or subtle racial appeals;

Plaintiffs rely on evidence of a few comments made in the past by private individuals. Some of these allegedly discriminatory comments were hearsay, some were made anonymously, and some were so remote in time as to carry little weight. The Plaintiffs also rely on the publication of a list of absentee voters by a local newspaper as the most recent overt racial appeal against Hispanic voters. As the identity of absentee voters is a matter of public record, this incident carries little weight.

g. the extent to which members of the minority group have been elected to public office in the jurisdiction;

The evidence indicated that Hispanics experience no serious impediments to participating in the political process today. Hispanics in H.D. 60 actively participate in the Democratic and Republican parties. Hispanics control the Democratic party in the Valley. Hispanics have run for and been elected to numerous political offices in the Valley. Hispanics are elected and appointed to local, county, and state-level boards, commissions, **[p. 1530]** and offices. The evidence shows that Hispanics have served and continue to serve on local school boards, in local mayoral offices, on rural electric boards, on boards of county commissioners, in sheriff's offices, and in other county offices.

Hispanics in H.D. 60 are active participants in both the Republican and Democratic parties. Hispanics have been delegates to Republican and Democratic state and national conventions. One of the Plaintiffs has held political office in the Valley and two of the Plaintiffs have held office in the Democratic party. The Plaintiffs have conducted successful campaigns to improve Hispanic voter registration, Hispanic voter turnout, and Hispanic absentee voting. While the Plaintiffs' Hispanic Democratic candidates of choice have not yet won the H.D. 60 representative seat, the Plaintiffs' Hispanic Democratic candidates of choice have consistently

been nominated by the Democratic party and won the Democratic primaries. (Testimony of Jennie Sanchez).

h. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;

While the Plaintiffs point to evidence that several local public officials in H.D. 60 have been non-responsive to particularized Hispanic needs, the court believes that evidence of the responsiveness of H.D. 60's state legislator is the most probative. The Plaintiffs' primary criticisms of Representative Entz are that he did not speak out strongly enough against the English Only Amendment, he did not speak out strongly enough in favor of bilingual education for non-English speaking children, and he does not attempt to meet and talk with Democrats in Center. (Testimony of Jennie Sanchez). The evidence indicates, however, that Representative Entz has been responsive to the needs of all his constituents, including Hispanics. Representative Entz has worked on education issues, housing issues, and economic development issues. He worked against the English Only Amendment, has worked to obtain funding through grants for local governments within H.D. 60 (Defendants' Exhibit B), has worked on a 1994 school financing act to obtain equality in school financing, and has helped constituents obtain jobs. Representative Entz has supported Hispanic candidates for office, has worked on a Scenic Byway designation, has supported the Cumbres & Toltec Railroad enterprise, and has worked in cooperation with the Hispanic representatives in the Legislature. Entz sees the most important issues for H.D. 60 as economic development, education, and water. He has worked continuously to attract agriculturally based entities to H.D. 60.

i. Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous;

There is no evidence that the State's asserted reasons for drawing and defending H.D. 60 are maintained on a tenuous basis as a pretext for discrimination. The evidence shows that the Colorado Reapportionment Commission followed the dictates of § 2 in drawing H.D. 60 from the beginning to the end of the reapportionment process. H.D. 60 as currently drawn actually increased the Hispanic voting age population by more than 5% over the previous district. After numerous meetings and public hearings, where sentiment was overwhelming to keep the Valley politically whole and intact, the Commission adopted H.D. 60 as currently drawn and the Colorado Supreme Court approved it over objections similar to those brought by the Plaintiffs here. Reapportionment is certainly always a delicate balancing act between the Voting Rights Act and many other considerations. It cannot properly be said that the State's reasons for drawing H.D. 60 were tenuous.

D. *Conclusion*

Under the Plaintiffs' theory of this case, "votes that do not control a representative are essentially wasted; those who cast them go unrepresented and are just as surely disenfranchised as if they had been barred from registering.... Such conclusions, of course, depend upon a certain theory of the 'effective' vote, a theory that is not inherent in the concept of representative democracy itself." *Holder*, --- U.S. at ----, 114 S.Ct. at 2595 **[p. 1531]** (Thomas, J., concurring in the judgment). The Plaintiffs' position gives "credence to the view that race defines political interest." *Id.* --- U.S. at ----, 114 S.Ct. at 2597. The Plaintiffs position leads us "towards a system that is

indistinguishable in principle from a scheme under which members of different racial groups are divided into separate electoral registers and allocated a proportion of political power on the basis of race." *Id.* --- U.S. at ----, 114 S.Ct. at 2598. The Plaintiffs would have the court assume "that members of the racial group must think alike and that their interests are so distinct that the group must be provided a separate body of representatives in the legislature to voice its unique point of view. Such a 'system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant.' " *Id.* --- U.S. at ----, 114 S.Ct. at 2599, citing *Wright v. Rockefeller*, 376 U.S. 52, 67, 84 S.Ct. 603, 611, 11 L.Ed.2d 512 (1964). Such a system generates "antagonisms that relate to race or religion rather than to political issues ...; communities seek not the best representative, but the racial or religious partisan." *Id.* --- U.S. at ----, 114 S.Ct. at 2599, citing *Wright*, 376 U.S. at 67, 84 S.Ct. at 611. As a practical political matter, the Plaintiffs' urging "to segregate political districts by race can only serve to deepen racial divisions by destroying any need for voters or candidates to build bridges between racial groups or to form voting coalitions." *Id.* --- U.S. at ----, 114 S.Ct. at 2599. The Plaintiffs' theory of the case reflects, as Justice Thomas more ably describes:

> "only one possible understanding of effective exercise of the franchise, an understanding based on the view that voters are 'represented' only when they choose a delegate who will mirror their views in the legislative halls.... But it is certainly possible to construct a theory of effective political participation that would accord greater importance to voters' ability to influence, rather than control, elections. And especially in a two-party system such as ours, the influence of a potential 'swing' group of voters composing 10%-20% of the electorate

> in a given district can be considerable.... Some conceptions of representative government may primarily emphasize the formal value of the vote as a mechanism for participation in the electoral process, whether it results in control of a seat or not.... Under such a theory, minorities unable to control elected posts would not be considered essentially without a vote; rather, a vote duly cast and counted would be deemed just as 'effective' as any other. If a minority group is unable to control seats, that result may plausibly be attributed to the inescapable fact that, in a majoritarian system, numerical minorities lose elections."

Id. --- U.S. at ---- - ----, 114 S.Ct. at 2595-96.

Treating equal political opportunity as the focus of the inquiry and examining the three *Gingles* preconditions and the totality of the circumstances, the court concludes that H.D. 60 as presently drawn does not deny Hispanic voters equal political opportunity under the meaning of § 2 of the Voting Rights Act.

Accordingly,

IT IS ORDERED that judgment is entered in favor of the Defendants and against the Plaintiffs on the complaint alleging violation of § 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.

APPENDIX C INDEX

CITIZENS FOR THE SOLIDARITY OF THE SLV, INC.

ALAMOSA:

San Luis Valley Federal Savings and Loan
Alamosa County Democratic Party
The Friends of the Dunes, Inc.
Alamosa County Commissioners
Alamosa Optimist Club
Alamosa Elks Lodge 1297
Alamosa Legion Post 113 Ladies Auxiliary
VFW Post 899
VFW Post 899 Ladies Auxiliary
American Legion 113

ANTONITO:

Town of Antonito

CENTER:

Center Potato Growers Cooperative, Inc.
Center Fire Protection District
Town and country Club
San Luis Valley Irrigation District
Heart and Eagle Federated Women's Club

CONEJOS:

Northeast Conejos County Fire Protection District
Northwest Conejos County Fire Protection District
Conejos County Housing Authority
Conejos County Republican Party
Conejos County Soil Conservation District
Conejos County Commissioners
Conejos Water Conservancy District
The Board of Trustees of the Town of La Jara
County of Conejos

CRESTONE:

Town of Crestone
Open Space Alliance

Crestone--Moffat Business Association

CREEDE:

Mineral County Commissioners

HOOPER:

Town of Hooper

DEL NORTE:

Rotary Club of Del Norte
Rio Grande County Bank

MOFFAT-HOOPER-MOSCA:

Mosca-Hooper Service League
Town of Moffat

MONTE VISTA:

San Luis Valley Water conservancy District
Rio Grande County Commissioners
Rio Grande County Republican Party
Rio Grande Savings
Monte Vista Tree Board
Colorado Potato Administrative Committee
San Luis Valley Rural Electric Cooperative, Inc.
San Luis Valley Board of Realtors
Monte Vista Chapter DAR
Monte Vista Fire Department
City of Monte Vista
Monte Vista Chamber of Commerce

SAGUACHE:

The American Legion
Old Spanish Trial Association
Saguache County Farm Bureau

SAN LUIS:

Health Care Foundation

SOUTH FORK:

South Fork Chamber of Commerce

Town of South Fork

TRINIDAD:

Town of Trinidad

SCHOOL DISTRICTS:

Creede
Sanford
Sargent
Sangre de Cristo

OTHER VALLEY ORGANIZATIONS:

San Luis Valley Farm and Ranch Management
San Luis Valley Cattlemen's Association
Region 4--Colorado State Association County Clerk and Recorders
Citizens for San Luis Valley Water

SAN LUIS VALLEY FEDERAL
SAVINGS & LOAN ASSOCIATION
P.O. BOX 780 • ALAMOSA, CO 81101-0780
PHONE 719-589-6653
P.O. BOX 248 • MONTE VISTA, CO 81144-0248
PHONE 719-852-5991

RESOLUTION CONCERNING CITIZENS FOR THE SOLIDARITY OF THE SAN LUIS VALLEY

BE IT RESOLVED that San Luis Valley Federal Savings and Loan Association of Alamosa, on the Twenty-fourth day of February, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. The only area in which we do business is the San Luis Valley of Colorado, and we have officially so designated our lending area as required by the Community Reinvestment Act.

2. The San Luis Valley is completely surrounded by mountains and is a natural economic and geographic area with common interests which deserves to be represented by one elected official in the State Legislature.

3. Numerous local governments in the San Luis Valley work in cooperation with one another to accomplish mutual goals. Some examples are:

   San Luis Valley Board of Co-operative Services (School Districts)

   San Luis Valley Development Resources Group (Economic Development)

   San Luis Valley Board of County Commissioners

   San Luis Valley Water Conservation District

4. Numerous Health Care facilities and organizations provide services for the San Luis Valley, such as:

   San Luis Valley Regional Medical Center
   San Luis Valley Comprehensive Mental Health Center

San Luis Valley Alternatives Pregnancy Center
San Luis Valley Comprehensive Mental Youth Services
San Luis Valley Nutrition Programs for the Elderly
San Luis Valley Area Health Education Center
San Luis Valley Center for the Handicapped
San Luis Valley Christian Community Services
San Luis Valley Education Center
San Luis Valley Health and Aging Study
San Luis Valley Home Care
San Luis Valley HMO
San Luis Valley UNISERV (Colorado Education Association)

5. Numerous Law Enforcement entities operate exclusively in the San Luis Valley, such as:

   District Attorney
   Twelfth Judicial District
   Colorado State Patrol

6. There are 36 organizations and businesses listed in the Alamosa phone directory alone that start with "San Luis Valley...".

7. To split the San Luis Valley into two or three districts represented by someone elected by the more populous front range electors would, in effect, mean no representation for the San Luis Valley.

Results of Resolution by roll-call vote:

Donald K. Schall	Yes
Robert R. Foote	Yes
W. Dale Hettinger	Yes
J. Thomas Gilmore	Yes
Charles W. Houser	Yes
LeRoy J. Salazar	Yes
John W. Kelly	Yes

Attested to by:
W. Dale Hettinger
Secretary

ALAMOSA COUNTY DEMOCRATIC PARTY
405 WEST AVENUE, ALAMOSA CO 81101

JAMEEL JOSEPH
DEMOCRATIC COUNTY CHAIRMAN

AREA CODE 719
589-2141

Be it resolved that the Alamosa County Democratic Party strongly endorses the Citizens for the Solidarity of the San Luis valley on this 13 day of February 1997. We believe the San Luis Valley should remain as a single Legislative District for the following reasons:

1. The San Luis Valley is a diversified community complementing and relying on all counties to work together for continued economic/social viability.

2. Historically the valley has been treated as one entity as all components have thrived and benefited as illustrated by the SLV Emergency 911 project, the SLV Regional Airport, as well as agriculture entities such as the SLV Potato Growers, SLV Cattleman's Association, The Shipper's Association, and many others.

3. A reapportionment may in fact occur after the results of the 2000 census, and to do so now without having current and verifiable data would present an unnecessary financial burden to the taxpayers of Colorado.

Jameel Joseph
Chairman

RESOLUTION

WHEREAS, the San Luis Valley is a contiguous community surrounded by mountains and is a defined community with like problems and interests, and

WHEREAS, the proposed re-districting of House District 60 could cause the domino affect to many other House Districts, creating the loss of effective Representation of the San Luis Valley,

THEREFORE BE IT RESOLVED, that THE FRIENDS OF THE DUNES, INC. believe that the San Luis Valley should remain as a single Legislative District and endorse the brief to be filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado in order to protect the voting privileges of all San Luis Valley residents.

RESULTS OF RESOLUTION BY ROLL CALL VOTE:

Lucy G. Adams	Yea
Dennis R. Lamb	Yea
Sue Judis	Yea
William E. Wellman	Yea
Ruth Dixon	Yea
Kristin Emmons	Yea
Karen Zimmerman	Yea
Fred Bunch	Yea
Kris Illeaberger	Yea
Hobart N. Dixon	Yea

Attested to by:
Friends of the Dunes, Inc.
Hobert N. Dixon
President

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ALAMOSA COUNTY
February 12, 1997

Resolution No: 97-S-

Re: Redistricting of House District 60

Commissioner Allen moved for the adoption of the following resolution. Commissioner Bobicki seconded the motion.

Whereas:

1. The San Luis Valley of Colorado is a multi cultural, multifaceted community; and

2. The San Luis Valley has many Community Organizations, S.L.V. County Commissioners, S.L.V. Board of Cooperative Services, and many others; and

3. The San Luis Valley of Colorado has achieved many goals, S.L.V. Emergency 911, the S.L.V. Youth Detention Center, the S.L.V. Regional Medical Center, the S.L.V. Regional Airport, and many others; and

4. The San Luis Valley is a contiguous community surrounded by mountains and is a defined community with like problems and interests; and

5. The proposed redistricting of House District 60 could cause the domino affect to many other House Districts, creating the loss of effective representation; and

6. The reconvening of the reapportionment committee and the increase in election costs would cause an unnecessary financial burden on the taxpayers of Colorado, as there may be reapportionment with the year 200 census.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Alamosa County, Colorado, strongly believes that the San Luis Valley should remain as a single Legislative District and endorses the brief to be filed by the Citizens for the Solidarity of the San Luis Valley and State of Colorado in order to safeguard the voting privileges of the San Luis Valley

residents as a group with common interests and so as to prohibit those interests being usurped by becoming members of a Legislative District without those concerns and interests.

Roll call vote resulting in approval:

3 in favor none against

Board of County Commissioners
of Alamosa County
Robert Zimmerman
Chairman

Attest:
Holly Z. Lowder
Clerk of the Board

"Citizens for the Solidarity of the San Luis Valley"
P.O. Box 548
Alamosa, CO 81101

Be it resolved that Alamosa Optimist Club on the date of February 11, 1997 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons: to keep unity within the valley.

Results of Resolution by Roll-Call vote:

By Board of Directors Yea = 7 Nay = 0

Attested to By:
Dick Olson
President

RESOLUTION IN SUPPORT OF THE CITIZENS FOR THE SOLIDARITY OF THE SAN LUIS VALLEY

Be it resolved that the Alamosa Elks Lodge #1297 on the 11 day of February agrees and endorses the following resolution:

The entire San Luis Valley should remain as a single legislative district and supports the brief being filed by the Citizens for the Solidarity of the San Luis Valley for the following reasons:

1. The San Luis Valley is operates as a community with common interests.

2. The San Luis Valley is a multi-cultured multifaceted community depending on all counties for economic and social viability and success.

3. A reapportionment may again be considered after the 2000 census, to do so now, without the appropriate data from the census would be an unnecessary financial burden on the taxpayers of Colorado.

4. A division of the valley would translate into a loss of Representation for the entire valley, creating conflict in those areas which have historically been proven to be effective: i.e. SLV Region Airport, SLV Regional Medical Center, SLV Youth Detention Center.

Exhalted Ruler:
Bill Spencer

Be it resolved that the Ladies Auxiliary of Post 113 of the American Legion Alamosa, Colorado, on the date of 02-05-97, believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado for the following reasons:

Our concerns for the veterans at "HomeLake Veteran Center"
To protect our water rights
Adams State College
To keep our representation from the seven counties - which are the San Luis Valley - District 60

Results of Resolution by Roll Call Vote:

Yes =96 No = 0 Abstain = 0

Attested to by:
Jacqueline Ray Pavitt
Secretary of Unit #113

Be it resolved that Post 899 of the Veterans of Foreign Wars of Alamosa Colorado on the date of Feb. 4, 1997 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

As not to loose our representation
Protect our water resources
Concerns about Adams State College
Homelake Veterans Center

Results of Resolution by Roll Call Vote:

Yes = 206 No = 0 Abstain = 0

Attested to by:
Noel Herrera
Quarter Master

Be it resolved that the Ladies Auxiliary to Post 899 of the Veterans of Foreign Wars of Alamosa Colorado on the date of: 02-4-97 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado for the following reasons:

Water Resources
Homelake Veterans Center (Monte Vista)
We need to have local representation
Concerns about Adams State College

Results of Resolution by Roll Call Vote:

Yes = 84 No = 0 Abstain = 0

Attested to By:
Jacqueline Ray Pavitt
Secretary of Unit #899

Be it resolved that Post 113 of the American Legion Alamosa Colorado, on the date of 5 February 1997 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

As of the date stated herein, the AMERICAN LEGION DICKEY-SPRINGER POST #113, Alamosa, CO, voted the results as is submitted herewith: That the SOLIDARITY OF THE SAN LUIS VALLEY must be upheld. We represent a community in the State of Colorado, with ADAMS STATE COLLEGE, HOMELAKE, FARMERS, RANCHERS, BUSINESS AND A WATER RESOURCE. We are committed to protect our lives, our families and the State of Colorado; and any attempt to re-district our Valley would do nothing but take away our duly earned representation as citizens of the STATE OF COLORADO.

Results of Resolution by Roll Call Vote:

Yes = 12 No = 1 Abstain = 0

Attested to by:
Lyle D. Eagan
Adjutant

RESOLUTION OF ENDORSEMENT

Be it resolved that the Town of Antonito on February 5, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the citizens for the solidarity for the San Luis Valley and the State of Colorado, for the following reasons: The town board, a multi-ethnic community, shares a strong political union with the San Luis we have a common educational system, a common judicial district and most of the businesses of the San Luis Valley serve the San Luis Valley. The Cumbres and Toltec Scenic Railway is an asset to the San Luis Valley.

Results of resolution by roll-call vote:

Mike Trujillo	Yea
Alice Gurule	Yea
Carla Lucero	Yea
Julie Smith	Yea
Harold Abeyta	Yea

Louise Govea
Mayor

Attest:
Victoria Lucero
Town Clerk

Be it resolved that the Center Potato Growers Corp, Inc. stands firmly in support that the San Luis Valley should remain a single legislative district and should endorse the brief that is being filed by the Citizens for Solidarity for the San Luis Valley and State of Colorado. We are concerned the we would loose our rural identity as a geographic, economic, and diverse community, and reapportionment would sacrifice our common interests.

Verli F. Riley
President

Be it resolved that Board of Directors of the Center Fire Protection District on the date of February 11, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the citizens for the solidarity of the San Luis Valley and the State of Colorado, for the following reasons: We believe that we have received good representation over the years, and see no need to change District 60. We feel that it would be very detrimental to the fire district if District 60 is broken up, as the fire district lies in three counties, and it could divide it up so parts of the fire district would be in separate legislative districts.

Results of resolution by roll-call vote:

Yea = 5 Nay = 0

Attested to by:
Center Fire Protection District
LeRoy Stutesman
Board President

Be it resolved that GFWC/CFWC Town and Country Club of Center on the date of February 10, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the citizens for the solidarity of the San Luis Valley and the State of Colorado, for the following reasons: We do not want the town of Center or the San Luis Valley to be divided into two legislative districts because the area in question is, in fact, obviously unified geographically and separated from the other legislative districts by natural barriers (i.e. mountains. We feel that we have a right to be represented by someone from the valley, who understands valley issues, rather than by someone from Pueblo or Trinidad. If a single county or town were to be separated into two legislative districts, as would be the case in the proposed reapportionment, the cost of elections would be greatly increased. By law, districts will be reevaluated following the census in the year 2000. To reapportion them now and then again in three years would be a waste of taxpayers' money. The three women who have requested the reapportionment don't seem to represent the opinion of the majority of people (Hispanic and otherwise) of the San Luis Valley.

Results of resolution by roll-call vote

Yea = 10 Nay = 0

Attested to by:
Jeanette Howey
Secretary

Be it resolved that GFWC/CFWC Town and Country Club of Center on the date of February 24, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the citizens for the solidarity of the San Luis Valley and the State of Colorado, for the following reasons: We do not want the town of Center or the San Luis Valley to be divided into two legislative districts because the area in question is, in fact, obviously unified geographically and separated from the other legislative districts by natural barriers (i.e. mountains). We feel that we have a right to be represented by someone from the valley, who understands valley issues, rather than by someone from Pueblo or Trinidad. If a single county or town were to be separated into two legislative districts, as would be the case in the proposed reapportionment, the cost of elections would be greatly increased. By law, districts will be reevaluated following the census in the year 2000. To reapportion them now and then again in three years would be a waste of taxpayers' money. The three women who have requested the reapportionment don't seem to represent the opinion of the majority of people (Hispanic and otherwise) of the San Luis Valley.

Results of resolution by roll-call vote

Yea = 10 Nay = 0

Attested to by:
Jeanette Howey
Secretary

(This is a second roll call vote taken of only those members present at the 2/24 meeting who were not present at the 2/10 meeting.)

SAN LUIS VALLEY IRRIGATION DISTRICT
296 MILES STREET • P.O. BOX 637
(719) 754-2254
CENTER, COLORADO 81125

The Board of Directors of the San Luis Valley Irrigation District strongly opposes the redrawing of legislative lines in Colorado's House District 60.

The Valley as a whole, is a rural community with it's own unique set of geographic and economic concerns, and must be represented by an individual who lives in the Valley and understands these concerns. Representation by someone who lives in a larger, urban area could not, no matter how intentioned, represent the interests of the San Luis Valley. It is imperative, in our opinion, that House District 60 remain intact, encompassing the Valley as a whole entity, in order for the San Luis Valley to receive fair and equitable representation.

The San Luis Valley Irrigation District firmly supports the brief being filed by the Citizens for Solidarity for the San Luis Valley.

Bill V. Kopfman
President

David W. Graham
Vice President

Jack P. Kuntz
Director

Michael A. Entz
Director

Randall K. Palmgren
Director

Be it resolved that Heart and Eagle Federated Women's Club on the date of February 11, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the citizens for the solidarity of the San Luis Valley and the State of Colorado, for the following reasons: The present district has been satisfactory. The extra expenses now and will be repeated in 2000. There will be no representation from the Valley. The Valley is a compact unit. Why should the Hispanic representation be 51% - that is unfair to the other races!

Results of resolution by roll-call vote:

Yea = 10 Nay = 0

Attested to by:
M. Joyce McClure
Secretary of Heart of Eagle Club

Citizens of the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

Be it resolved that Northeast Conejos County Fire Protection District Board on the date of February 13, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons: For proper representation.

Results of resolution by roll-call vote:

W. Jeanne Reed	Yea
Ronald Morch	Yea
Tom Les	Yea
Blane Larsen	Yea
William F. Reynolds	Yea

Attested to by:
Jeanne Reed
Board Sec./Treasurer

Citizens for the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

Be it resolved that Northwest Conejos Fire Protection District on the date of February 17, 1997 a.d. believes that the entire San Luis believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the citizens for the solidarity of the San Luis Valley and the State of Colorado, for the following reasons: Support the issues brought forth by the citizens for the solidarity of the San Luis Valley.

Results of resolution by roll-call vote:

Lynn Coleman	Yea
Timothy G. Sutphen	Yea
Kip Sowards	Yea
Henry Schimpf	Yea
Robert Marquez	

Attested to by:
Robert Marquez
Secretary/Treasurer

Citizens for the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

RESOLUTION

Be it resolved that Conejos Co. Housing Authority on the date of 13 February, 1997 believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity and the State of Colorado, for the following reasons:

1. San Luis Valley must remain united as one entity of local interests and representation.

2. Insufficient information on impact and outcome.

Results of Resolution by roll-call vote:

Fred L. Velasquez	Yea
Alonzo R. Valdez	Yea
Luz Gerden	Yea
Lois Land	Yea
Jack Gilleland	Yea

Attested to by:
Fred L. Velasquez
Chairman

February 3, 1997

Citizens for the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

Be it resolved that on the date of February 13, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

Results of resolution by roll-call vote:
Yea = 16 Nay = 0

Attested to by:
LaVon Clements
Vice Chairman Republican Party (Conejos)

Citizens for the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

RESOLUTION

Be it resolved that Conejos County Soil Conservation on the date of Feb/ 10/97 believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons: We would like to keep the representation local and the San Luis Valley as one district.

Results of resolution by roll-call vote:

Myrt Davis	Yea
Lynn Coleman	Yea
Tom Bagwell	Yea
Ben Rizzi	Yea
J.E. Chacon	Yea

Attested to by:
Lynn Coleman
President

RESOLUTION

Whereas, Historically the SLV of Colorado has always been regarded as a multi cultural, multi faceted community.

Whereas, The SLV of Colorado has been a geographical isolated community because of the fact it is surrounded by mountains, and is a defined community with like problems, interests and aspirations.

Whereas, Because the SLV of Colorado is conceived to be a single unified entity, it has been able to cooperatively achieve many goals such as: SLV County Commissioners Assn, SLV Board of Cooperative Services, SLV Emergency 911, SLV Youth Detention Center, and the SLV Regional Airport, that may not have been achievable otherwise.

Whereas, The redistricting will have a major effect on neighboring districts and will cause a substantial, financial burden on the taxpayers of Colorado.

BE IT RESOLVED that the Conejos County Board of County Commissioners believes that the entire San Luis Valley should remain as a single cohesive unit and endorse the concept of the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado.

Lucy Cordova
Chairman

LeRoy Velasquez
Vice Chairman

Pete Llamas
Vice Chairman

CONEJOS WATER CONSERVANCY DISTRICT
318 MAIN STREET
MANASSA, COLORADO 81144-0040
PHONE & FAX: (719) 843-5261

MARCH 5, 1997

RESOLUTION

Be it resolved by the Board of Directors of the Conejos Water Conservancy District that the entire San Luis Valley should remain as a single legislative district and endorses the Brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. We believe that this is a unique area, and the concerns are different than those outside of the valley.
2. We believe that at least 50% of the elected officials in the San Luis Valley are Hispanic.
3. We believe that the population mix of the valley is about 45% Hispanic.
4. We believe that if a qualified Hispanic person was to run for state office that the individual would receive due consideration based on their qualifications and merits as any other candidate.
5. We firmly believe that if the question was put to a vote of the valley residents that it would overwhelmingly vote to remain as a consolidated district.

Results of a roll-call vote:

Felix Gallegos	Yea
Stanley Garcia	Yea
Aniceto Lucero	Yea
LaMont Morgan	Yea
Kelly Sowards	Yea
Charles Thomas	Yea
Michael J. Willett	Yea

Attested to by:
Robert E. Robins
Manager

BEFORE THE BOARD OF TRUSTEES OF THE TOWN OF LA JARA
COUNTY OF CONEJOS, STATE OF COLORADO

A resolution in support of efforts to leave the entire San Luis Valley as a single legislative district and endorsing the brief being filed in support of the same.

WHEREAS, efforts have been made, and continue to be made, that the boundaries of the Legislative District(s) from the San Luis Valley to the Colorado State Legislature should be redrawn to provide for reapportionment as advocated by certain citizens' groups and

WHEREAS, we, the undersigned members of the Board of Trustees are of the strong belief and conviction that it is not in the best interests of the citizens of the Town of La Jara whom we represent, as well as the interests of all the citizens who reside in the San Luis Valley, that the San Luis Valley should be split into more than one district, with counties from within the Valley being included with counties outside of the Valley in Comprising a legislative district; and

WHEREAS, we, the undersigned, are of the strong belief and conviction that whomever is elected to represent his or her legislative district lying entirely within or encompassing the entire San Luis Valley will be more apt to keep the best interests of the San Luis Valley first and foremost irrespective of that representative's gender or ethnic background.

NOW, THEREFORE, BE IT RESOLVED by the BOARD OF TRUSTEES OF THE TOWN OF LA JARA, COLORADO that the entire San Luis Valley should remain as a single legislative district and we hereby endorse the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and State of Colorado for the reasons as hereinabove set forth.

ADOPTED this 19th day of February, 1997.

THE BOARD OF TRUSTEES
OF THE TOWN OF LA JARA
Atilano S. Mondragon
Mayor

Attest:
Helen J. Hutchins,
La Jara Town Clerk

Results of resolution by roll-call vote:

Atilano S. Mondragon, Mayor	Yea
Jack Hoogendorn, Trustee	Yea
Larry Buhr, Trustee	Yea
Joe Silva, Jr., Trustee	
Lorraine Montoya, Trustee	Yea
Austin Valdez, Trustee	Yea
Richard Medina, Trustee	Yea

At a regular scheduled meeting of the Town of Crestone, Colorado on the 5th day of February, 1997, the following resolution was passed, to wit:

Be it resolved that the Town of Crestone believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief to be filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado in order to Safeguard the voting privileges of the valley residents as a group with common interests and so as to prohibit those interests being usurped by becoming members of a Legislative District without those concerns and interests.

Phil N. Hasser
Mayor

W. C. Snide
Edward Valko
Dave R. Peul

Pamela L. Bertin
Sam Pace
Charles Ehardt

Attest

OPEN SPACE ALLIANCE
P.O. BOX 10
CRESTONE, CO 81131
February 12, 1997

To Whom It May Concern

The San Luis Valley of southern Colorado is a unique geographic unit isolated from the rest of Colorado by an encircling ring of mountains. As a result, the people of the San Luis Valley share and have shared a heritage and history distinct and separate from the rest of Colorado.

As an organization dedicated to preserving and protecting the land, water, and air of the San Luis Valley, the Open Space Alliance believes that dismembering the political unity of the San Luis Valley through redistricting would severely limit the right of San Luis Valley citizens to work together for their common good and would stifle both the economic and social evolution of the area.

Therefore, the Open Space Alliance supports the Citizens for Solidarity of the San Luis Valley in their efforts to maintain the functional unity of the San Luis Valley's six counties and opposes any redistricting proposals that would sever the natural bond among these counties and their citizens.

Very Truly

KATE STEICHEN
President, Open Space Alliance

At a regular meeting of Crestone-Moffat business association on the 9th day of February, 1997, the following resolution was passed:

Be it resolved that the Crestone-Moffat Business Association believes the entire San Luis Valley should remain as a single Legislative District and endorses the brief to be filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado in order to preserve and protect the common interests of those citizens and the voting privileges of the valley residents as a group. By unanimous vote, the association is strongly opposed to any split of the valley or Saguache County's Legislative District.

Dennis Neuhaus
President

Barbara Hoeppner
Secretary

RESOLUTION
No. 97-3

WHEREAS, the Board of County Commissioners of Mineral County, Colorado has been made aware of a pending legal action which may result in a significant change in the boundaries of Colorado State Representative District #60 and this Board believes that it is imperative that such boundaries not be changed; and

WHEREAS, District #60 has consisted of the six counties of the San Luis Valley for many years and such boundaries are completely consistent with the factors described in the next paragraph; and

WHEREAS, the San Luis Valley is: (1) A geographically, politically and socially isolated unit, almost completely surrounded by mountains, accessible almost exclusively by high mountain passes and whose inhabitants, regardless of any differences, share the same common benefits and problems associated with living in an isolated valley; (2) A distinct economic unit consisting of farms, ranches and small major markets and from major transportation facilities; (3) A separate judicial unit, as evidenced by the Twelfth Judicial District; (4) A separate medical and law enforcement unit as a result of the extreme geographical isolation; (5) A separate transportation unit in that the entire San Luis Valley shares the same problems and limitations; (6) A separate water unit, as evidenced by Water Division #3, (which factor is of the utmost importance to the survival of the farms, ranches and communities).

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Mineral County, Colorado, on behalf of itself and as the duly elected representatives of the voters and residents of Mineral County, hereby affirm their support that the entire San Luis Valley should remain as a single Representative District, and we endorse this concept as contained in the brief that is being filed by "The Citizens for the Solidarity of the San Luis Valley" and the State of Colorado.

The foregoing Resolution was duly adopted upon motion made by Commissioner Wardell, seconded by Commissioner Wintz and unanimously carried on a vote of three in favor and none against, at a Special Meeting of the Board of County Commissioners of Mineral County, Colorado held at the Mineral County Courthouse, Creed, Colorado on the 18th day of February, 1997.

Robert A. Boppe
Chairman/Commissioner

Attest:
Virginia Wyley
Mineral County Clerk
and Recorder

Stephen L. Wardell
Commissioner

Rodney G. Wintz
Commissioner

Be it resolved that the Town of Hooper on the 18th day of February, 1997 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. We feel it is imperative that the whole of the San Luis Valley is needed to maintain the water resources for our communities.

2. The San Luis Valley is a distinct geographical division with distinct agricultural needs and therefore needs a Legislative District to uphold these needs.

Results of Resolution by Roll Call Vote:

Paul Williams, Mayor	Yea
Lloyd Proberts, Mayor Pro Tem	Yea
Charlie Williams, Trustee	Yea
Ron Strong, Trustee	Yea
Patricia Stoops, Trustee	Yea
John Williams, Trustee	Yea
Charlene Brown, Trustee	Yea

Attested to by:
Ruby M. Strong
Town Clerk

Be it resolved that Rotary Club of Del Norte on the date of 2-26-97

Believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the CITIZENS FOR THE SOLIDARITY OF THE SAN LUIS VALLEY AND THE STATE OF COLORADO, for the following reasons:

In order that we may continue to elect representatives from our unique geographic area.

To control our own political destiny and not be represented by politicians from a metro area along the East Range.

To maintain the historical pattern of having our cultural heritage geographically intact.

Results of the Resolution by Roll Call Vote:

Allen Davey	Yea
Clive Heller	Yea
Jeff Schrader	Yea

Attested to by:
Clive Heller
President
2-26-97

Be it resolved that Rio Grande County Bank on the date of 02-10-97 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado for the following reasons:

The interests of the Front Range are not the same as the San Luis Valley in regards to:

1) Political
2) Water
3) Agricultural
4) School Districts
5) Land Use

In addition the San Luis Valley is a geographic entity that should be left whole to solve our needs and not be dependent on the front range who have their own needs and problems to deal with.

Results of Resolution by Roll-Call Vote:

Vivian Eriksen, Director - Chairman	Yea
Rochelle Eriksen, Director	Yea
David Colville, Director	Yea
Larry Martz, Director	Yea
Fran Strnad, Director - President	Yea

Attested to by:
Rio Grande County Bank
Don Henson
Vice President

MOFFAT - HOOPER - MOSCA
SERVICE LEAGUE
Serving the San Luis Valley Since 1931

Be it resolved that the Mosca-Hooper Service League on the date of February 3, 1997 believes that the entire San Luis Valley should remain as a single Legislative District and endorses the brief that is being filed by the citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

The San Luis Valley is a Natural Geographical Division of the State of Colorado. It is a unique area that comprises about 7,000 square miles of high mountain valley especially suited to agricultural activities. Since the late 1800's agriculture has played a leading role in the economy of the San Luis Valley and since Colorado became a state, the valley has stood on its own as a separate political entity.

Due to threats to the critical water resources that are found under the valley floor, we feel that it is imperative that the valley remain as one district to prevent the exportation of this precious resource which is the life-blood of the agricultural community. We are extremely concerned that the division of the valley into two separate Legislative Districts will ultimately work to the disbenefit of our interests.

It is unfortunate when the wishes of a handful of selfish residents from one community, causes the majority of residents, of all races, cultures and backgrounds, from throughout the valley to lose their united political voice.

As a unique rural community the valley requires its own representation to protect our interests, resources and economy. The representation which will by provided by being linked to the Front Range of Colorado will not be able to speak as a unified voice for our valley communities in the State Legislature, Since we now have Local Representation, with a representative who lives in our community, we feel that to be deprived of this long-standing Local Representation is unjust.

Result of the roll call vote of the members of the Mosca - Hooper - Moffat Service League is as follows:

Karen Zimmerman	Yea
John P. Mueller	Yea
Harold R. Reinhart	Yea

Louis O. Reinhart	Yea
Eva O. Hole	Yea
Clydena K. Baugh	Yea
John L. Baugh	Yea
Helen L. Pickett	Yea
Margaret F. Davis	Yea
Edgar E. Davis	Yea
Jim Jones	Yea
H. J. West	Yea
James Lurdlith	Yea
Mary Johnston	Yea
William E. Wellman	Yea

MOFFAT
P.O. Box 353
Moffat, Colorado 81143

Be it resolved that the Town of Moffat Board of Trustees on the date of March 4, 1997 believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado.

Results of resolution by roll-call vote:

Name:	Vote:
Richard Beard	Yea
Louise Bunker	Yea
Pauline Mitchell	Yea
Ken Skoglund	Yea

Attested to by Billie Kerrick, Clerk/Treasurer — Paul Kerrick, Mayor

RESOLUTION

Be it resolved that the San Luis Valley Water Conservation District believes that the entire San Luis Valley should remain as a single legislative district and endorses the Brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado. We believe that if the reapportionment takes place, the San Luis Valley could lose all representatives to the large metropolitan area.

Results of Roll-Call Vote:

Name:	Vote:	
Keith Holland	Yea	
Doug Gunnels	Yea	
Angelo Curto	Yea	
Athie Daniels	Yea	
Farris Bervig	Yea	
Robert Felmlee	Yea	
Doug Messick		Yea
Mike Prentice	Yea	

Attested to by:
San Luis Valley Water Conservancy District
By: Keith Holland, President
Date of Resolution: February 13, 1997

San Luis Valley Water Conservancy District
P.O. Box 729
Monte Vista, Colorado 81144
(719) 852-2315

Be it resolved that the Rio Grande Water Conservation District Board of Directors believes that the entire San Luis valley should remain as a single legislative district and endorses the brief that is being filed by the CITIZENS FOR THE SOLIDARITY OF THE SAN LUIS VALLEY and the STATE OF COLORADO for the following reason:

The San Luis Valley is a high mountain plateau averaging about 7,600 feet in altitude. The headwaters of the Rio Grande (River) originate in the mountains to the west of the San Luis Valley and then begins its descent to the Gulf of Mexico across the Valley's floor. The Rio Grande Water Conservation District represents the five counties within the boundaries of the San Luis Valley which are affected by the Rio Grande Compact and whose purpose is to protect, develop, and enhance the water resources of the Valley. This area of Colorado receives an average of less than seven inches of precipitation a year. Because of the scant precipitation, the Valley's number one economic base, which is agriculture, is dependent on irrigation practices.

To protect the Valley's fragile economic base, it is vitally important to protect the most precious resource the San Luis Valley has and that is it's water. To accomplish this, it is equally important to keep the San Luis Valley whole so that its representation in the State Legislature is not fragmented.

Results of Roll-Call Vote:

Name	Vote:
Roy Archuleta	Yea
Floyd Chiles	Yea
Lynn Kopfman	Yea
Dale Pizel	Yea
John Shawcroft	Yea
Michael J. Willett	Yea
George Whitten, Jr.	Yea
Ray Wright	Yea
Bob Zimmerman	Yea

Attested to by: Ralph Curtis, General Manager
Date of Resolution 3/5/97

Be it resolved that Rio Grande County Board of County Commissioners on the date of February 5, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. The San Luis valley is an isolated community much has definite community interests.
2. The proposed split would remove SLV's effective voice.
3. There are presently opportunities of all races to seek office and that is indicated by the number of Hispanics who presently hold office.
4. The cost for redistricting will be substantial and appears to be unwise at this time since this review will occur after the 2000 census.
5. With term limitation there will be more opportunities for individuals to run for office and not have to run against an incumbent.
6. This redistricting will have major effects on neighboring districts.
7. The San Luis Valley has vital issues such as water which is only a San Luis Valley issue.

Result of the resolution by roll call vote:

Name:	Vote:
Vern Rominger	Yea
Robert Schaefer	Yea
Melvin E. Getz	Yea

Attested to by: Kay Harmon, Secretary to the Board
Date: February 5, 1997

Rio Grande County Republican Party
Monte Vista, Colorado 81144

Be it resolved that the Rio Grande County Republicans on the date of February 6, 1997, believe that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

Too costly, rural representation may be lost, community of interest, complicate the judicial area, and water districts.

Results of resolution by roll-call vote was unanimous, for a Yea vote.

Names:
Paul Lincoln
Robert Kings
Horton Wells
Wilma Hettinger
Charles Stillings
Sam Nickerson
Bryce Payne
Lela Ann Bennett
Walter Carlsen
Elaine Ford
Marcella McFarland
Robert Davie
Peggy Kern
Melvin Getz
Vern Rominger

Attest to by: Karl Kramer, Chairman

Rio Grande Savings and Loan Association
Main Office: 901 First Avenue
P.O. Box 29
Monte Vista, Colorado 81144
(719) 852-5933

February 11, 1997

Mr. Tim Bachicha, Treasurer
Citizens for the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

Dear Mr. Bachicha,

The purpose of this letter is to inform you that the Officers and Directors of Rio Grande Savings and Loan Association support the Citizens for the Solidarity of the San Luis Valley in their effort to assure that the San Luis Valley remains a single legislative district in the State of Colorado.

The geographic nature of the San Luis Valley is one that gives it a very unique character that is not compatible or closely associated with any other area. What goes on in one county in the San Luis Valley almost always affects the surrounding counties. This is particularly true when it comes to water issues and the economy of the valley which, is very heavily dependent upon agriculture. In the overall scope of things, it would be very detrimental to the citizens of the San Luis Valley if it were to be divided into separate districts or included into other districts beyond the confines of the valley that do not share our common interests and concerns.

The San Luis Valley has a hard enough time in dealing with the State of Colorado when it comes to issues that affect the citizens of the valley with the present districting. If the valley was to be divided, it would further reduce the ability of the citizens of the valley to have an effective voice in the legislative process.

For these reasons, we support the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley to continue the San Luis Valley as one legislative district.

Sincerely,
C.R. Bryant, Jr.
President

Monte Vista Tree Board
P.O. Box 610
Monte Vista, Colorado 81144

February 28, 1997

Citizens for the Solidarity of the San Luis Valley
c/o Tim Bachicha
P.O. Box 548
Alamosa, CO 81101

Be it resolved that Monte Vista Tree Board, as part of the Monte Vista City Council, on the date of February 27, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

The San Luis Valley should stay as one body.

We must all work together to protect and preserve our natural resources.

Results of resolution by roll-call vote:

	Vote:	Yea
Monte Vista Tree Board of Directors		13

Attested to by: Wilma Hettinger, Chairman

Colorado Potato Administrative Committee
San Luis Valley Office (Area II)
P.O. Box 348
1305 Park Avenue
Monte Vista, CO 81144
719-852-3322
Fax 719-852-4684

To whom it may concern:

Whereas, be it resolved that the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), on the 20th day of February 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses unanimously the brief being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado;

Whereas, the San Luis Valley is one of the most fertile agricultural areas in the United States and contributes highly to the economy of Colorado;

Whereas, the present district 60 boundaries provides representation and continuity for all producers and a united voice for the San Luis Valley potato industry;

Whereas, redistricting of the San Luis Valley would remove the strong legislative representation the San Luis Valley presently enjoys at the state level.

Attested to by:
Wayne D. Thompson
Executive Director

San Luis Valley Rural Electric Cooperative, Inc.
3625 West U.S. Highway 160
Monte Vista, CO 81144
719-852-3538
Fax 719-852-4333

Resolution of Board of Directors
San Luis Valley Rural Electric Cooperative, Inc.
Monte Vista, Colorado

The undersigned Secretary of the San Luis Valley Rural Electric Cooperative, Inc. does hereby certify that the following Resolution was unanimously adopted at a Regular Board meeting of the Board of Directors of the San Luis Valley Rural Electric Cooperative, Inc. held at the Cooperative's headquarters, duly called on 25 February 1997 at which time a quorum answered roll call:

It was resolved:

That the Board of San Luis Valley Rural Electric Cooperative, Inc. does hereby believe that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. Dividing District 60 will dilute the representation of the San Luis Valley in the Legislature and;

2. Consistent with the principles of cooperatives, preserving the identity and cohesiveness of the San Luis Valley is of critical importance.

Deborah A. Palmgren, Secretary

Certification

I, Deborah Ann Palmgren, do certify that I am Secretary of the San Luis Valley Rural Electric Cooperative, Inc. and that the foregoing resolution was adopted at a meeting of the Board of Directors of the San Luis Valley Rural Electric Cooperative, Inc. held on 25 February 1997 at which time a quorum was present.

Deborah A. Palmgren, Secretary

San Luis Valley Board of Realtors
835 First Avenue
Monte Vista, Colorado 81144
719-852-5194

February 18, 1997

Citizens for the Solidarity of the San Luis Valley
Attn: Castelar Garcia
6510 Cty Road 13
Antonito, CO 81120

Re: Re-districting of Colorado House District 60

Dear Mr. Garcia:

The San Luis Valley Board of Realtors wishes to show its support of the Colorado Supreme Court's decision to halt the re-districting of the San Luis Valley by the Colorado State House of Representatives.

Our Valley consists of multi-cultural and multi-political groups of fair minded citizens who come together on common objectives even though the Valley covers many hundreds of square miles and has a population of about 40,000 residents. Many of these citizens feel as this Board does - everyone needs to stand as one community. To divide the Valley into three (3) or four (4) portions controlled by outside political entities would not be in the best interest of the citizens of the San Luis Valley.

Several issues this Board would like to address are:
1. If re-districting were to occur, the northern part of the Valley would be in a district with Pueblo; the southwestern portion with Durango; and the southeastern portion with Trinidad. This would forever divide the Valley, and the particular needs of the San Luis Valley could not possibly be met by representation from these diverse geo-political areas.

2. There is little or no real evidence of "block voting" as claimed by the plaintiffs. Colorado State Representative Lewis Entz has run for office five (5) times. In three (3) of those races, he ran unopposed. Consequently, the claim defies all reason and logic. It is simply not possible to have "block voting" in a one person race.

The San Luis Valley Board of Realtors is comprised of business people involved in their communities in many ways. The Board believes success

for all Valley residents requires a positive economic atmosphere - remaining united is critical to that atmosphere now as when the Valley was involved with the AWDI issue.

It is strongly felt by many San Luis Valley citizens that should re-districting occur, political and financial problems would be insurmountable, and the autonomy of the San Luis Valley would be lost forever. In this case, the allegations given for the need for re-districting have not been proven, as the U.S. Supreme Court twice has rejected gerrymandering based upon race.

Progress has been made in the San Luis Valley, and the best way to continue that progress is to keep the San Luis Valley as one political entity. This Board urges the Attorney General's office to defend the unity of the Valley vigorously.

Most respectfully submitted,

The Board of Directors
San Luis Valley Board of Realtors
Lee T. Holfeltz
President

Be it resolved that Monte Vista Chapter DAR on the date 2-15-97 believes that the entire San Luis Valley should remain as a single legislative district end endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

The San Luis Valley is somewhat isolated from the rest of the state. Some of our problems and desires are unique to the Valley and should be addressed by someone who understands and agrees with us. Not someone who feels that Pueblo's interests are more important that ours.

Results of resolution by roll call vote:

Name:	Vote:
Gloria Boppe	Yea
Virginia Sutherland	Yea
Selma Waters	Yea
Kay Berry	Yea
Mona VanIwarden	Yea
Vera Rockey	Yea
Mary Bloxsom	Yea

Attested to by:
Gloria Boppe
Chapter Regent

Monte Vista Fire Department
P.O. Box 187
Monte Vista, CO 81144
Emergency No. 719-852-5111 Dept. No. 719-852-3371

Be it resolved that Monte Vista Volunteer Fire Department on the date February 6, 1997 believes that the entire San Luis Valley should remain as a single legislative district end endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

We feel that legislative issues involved with FPPA and Fire Departments in the San Luis Valley receive direct and better attention as a single Legislative District.

The past operation of the District has proved itself to our department as a viable means of voicing concerns and legislative actions.

It is hereby declared that this resolution is necessary to the immediate preservation of the public peace, health, and safety for the citizens of the San Luis Valley.

Approved: Charles Archer, Fire Chief

Attest: James L. Clare, Asst. Fire Chief

Done and signed this 6th day of February 1997

Resolution No. 3-97

A Resolution in Opposition to Redistricting of the San Luis Valley

Whereas, redistricting of the San Luis Valley is a current issue of litigation which affects all citizens living within the six county area including Saguache, Mineral, Rio Grande, Alamosa, Costilla and Conejos Counties, (which area is otherwise known as the San Luis Valley); and

Whereas, such areas has historically developed as a cultural and geographic unit of the State; and

Whereas, such area is and has been a governmental entity for judicial purposes; and

Whereas, the San Luis Valley has developed as a cohesive unit with networked organizations i the are of ranching, farming and industry; and

Whereas, the San Luis Valley produces significant portions of the State's crops in the form of potatoes, lettuce, barley and other produce; and

Whereas, current proposals to redistrict would remove the San Luis Valley's effective voice from governmental operations, governmental affairs, and representation within the state legislature; and

Whereas, the cost for redistricting would be substantial; and

Whereas, the present representation of local government within the San Luis Valley is fairly representative of the current racial balance in the geographical area; and

Whereas, the San Luis Valley has cohesive voting power on ceratin Valley issues essential to the production of Colorado agriculture, (such as water); and

Whereas, the City of Monte Vista is a portion of the municipalities contained in Rio Grande County and the San Luis Valley and whose interest are identical to those of the Valley in the above regard,

Now, therefore, it is hereby resolved by the City Council of the City of Monte Vista that the entire San Luis Valley remain as a single legislative district and the Board further endorses an amicus brief being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado

in support of the current legislative (Valley) District 60.

Done and signed this 6th day of March 1997.

Britt Jardon, Mayor
Ernest Martinez, Councilor
Neta Slingerland, Councilor
Jose "Art" Medina, Councilor
Jim Whitney, Councilor

Attest:
Lucille Duran, City Clerk

Monte Vista Chamber of Commerce
1035 Park Avenue
Monte Vista, Colorado 81144
719-852-2731

Be it resolved that Monte Vista Chamber of Commerce Board of Directors on the date of February 6, 1997, believes that the entire San Luis Valley should remain as a single legislative district end endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

The San Luis Valley is a family, one county or community could not prosper and grow without the other five. We work together to promote the entire Valley, whether we are promoting tourism, our numerous agriculture products and to protect and preserve our natural resources. We must be represented as a whole, represented by members of our San Luis Valley community. Our welfare depends on it.

Results of resolution by roll call vote:

	Vote:	Yea
Monte Vista Chamber of Commerce Board of Directors		8

Attested to by: Wilma Hettinger, President, Monte Vista Chamber

The American Legion
Garcia Post No. 110
P.O. Box 345
Saguache, Colorado 81149

February 10, 1997

To whom it may concern:

Membership of Garcia Post No. 110 supports the efforts of the Citizens of the Solidarity of the San Luis Valley and opposes any further attempts to redistrict the San Luis Valley.

Cecil F. Hall
Adjutant

Old Spanish Trail Association
Saguache County Chapter
P.O. Box 502
Saguache, Colorado 81149

February 13, 1997

Secretary
Citizens for the Solidarity of the San Luis Valley
P.O. Box 548
Alamosa, CO 81101

Dear Secretary:

The following resolution was adopted at a regular meeting of this chapter on February 12, 1997.

Be it resolved that Saguache County Chapter of the National Old Spanish Trail Association on February 12, 1997 believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

Because of its location, agricultural base and great distance from national markets, the San Luis Valley (SLV) is a distinct economic and cultural entity. Political redistricting, or gerrymandering, to attack a problem which doesn't exist would destroy the cohesiveness of the SLV. Proceeding with this objective is misguided and ill-advised.

Our current representative in the legislature, Lewis Entz, stood unopposed for the last two elections.

The reality is that qualified Hispanic candidates are electable! This is evidenced by the present incumbents at Saguache County, who serve as treasurer, assessor, and sheriff.

Results of resolution by roll-call vote:

Simon Halburian	Yea	
Cecil Hall	Yea	
Delores Worley	Yea	
Ron Kessler	Yea	
Connie Casteel	Yea	
Charlotte McKee		Nay
Yvonne Halburian	Yea	

Attested to by: Connie Casteel, President

February 12, 1997

Be it resolved that the Saguache County Farm Bureau stands firmly in support that the San Luis Valley should remain as a single legislative district end endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado. We are concerned that we would loose our rural identity as a geographic, economic, and diverse community, and reapportionment would sacrifice our common interests.

Signed: Charles Versaw, President

Health Care Foundation
P.O. Box 761
San Luis, Colorado 81152

Health Care Foundation Inc. met on March 2, 1997, in San Luis, CO and passed the following resolution:

Be it resolved that Health Care Foundation Inc. supports the position and the amicus brief to be filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado to keep the six counties of the San Luis Valley entirely within state representative District 60. This foundation's mission is that of bettering rural health care in the San Luis Valley and, therefore, concludes that health issues of concern to it's resident would best be served by supporting the position to preserve the geographical compactness of State Representative District 60.

The results of the resolution vote were as follows:

Maclovio C. Martinez, President	Abstain
Juan C. Gomez, III, Treasurer	Yea
Connie Velasquez, Secretary	Yea
Selso J. Lopez, Member	Yea

Attested to by: Connie Velasquez, Secretary

CHAMBER OF COMMERCE
P.O. Box 12
South Fork, CO 81154

Be it resolved that the South Fork Chamber of Commerce on the date of February 3, 1997, endorses that the entire San Luis Valley should remain as a single legislative district as put forth in the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:
The San Luis Valley is a uniquely integrated geographic whole in which the citizens are bound together by common social, economic and sociological needs. These needs are being effectively addressed by the current legislative district. To redistrict the area will result in a dilution of the political voice of all of the citizens of the San Luis Valley and a subsequent lessening of our ability to have our unique needs met.

Results of resolution by roll-call vote:

Name:	Vote:
La Wanna Pair (Secretary)	Yea
Linda Hicks (Vice President)	Yea
Ron VanDerPloeg (President)	Yea
Martin Danko (Board Member)	Yea
Roy Snyder (Board Member)	Yea

Attested to by: Ron VanDerPloeg, President
South Fork Chamber of Commerce

TOWN OF SOUTHFORK
Resolution 97-03

Board of Trustees Support of Citizens for the Solidarity of the San Luis Valley

Whereas, The Board of Trustees of South Fork, Colorado, has received a request from the non-profit Citizens for the Solidarity of the San Luis Valley to endorse their opposition to redrawing legislative lines in Colorado's House District 60, and

Whereas, The Board of Trustees of South Fork, Colorado agrees that a single legislative district is the most beneficial means of serving all of the needs of the San Luis Valley.

Be it therefore resolved that the Town of South Fork on the date of February 12, 1997, endorses that the entire San Luis Valley should remain as a single legislative district as put forward in the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

The San Luis Valley is currently ONE political entity with representation which best fits the needs of our local community.
The San Luis Valley has ONE Judicial District.
The San Luis Valley has ONE Board of Cooperative Services.
The San Luis Valley has ONE Consortium of County Commissioners.
The San Luis Valley has ONE Banking District.
The San Luis Valley has ONLY two major water districts.

Results of resolution by roll-call vote:

Name:	Vote:
Trustee Clint Chappell	Yea
Trustee Lowell Hicks	Yea
Trustee Wayne Odom	Yea
Trustee Charles Murray	Absent
Trustee Nellie Miller	Yea
Trustee Roxi Finley	Yea

Attested to by: Harry A Fluck, Mayor
Robert W. [illegible] Town Clerk

Resolution No. 996

A Resolution of the City Council of the City of Trinidad, Colorado supporting citizen efforts to have the entire San Luis Valley remain as a single State House District

Whereas, the current configuration of legislative districts based on the 1990 census has resulted in a State House of Representatives district which encompasses the entire San Luis Valley plus the western portion of Las Animas County; and

Whereas, a lawsuit has been filed in the federal courts challenging the boundaries of said district based on the allegation that certain minority groups are denied adequate representation in the State Legislature as the boundaries are currently drawn; and

Whereas, a community of interest exists in the San Luis Valley which bast represented in the State Legislature by maintaining the existing boundaries for the House seats; and

Whereas, if the Plaintiffs in this lawsuit are successful, the boundaries of numerous house districts in Southern Colorado would be changed, including those districts located in the Trinidad area and Las Animas County, and would result in the division of the San Luis Valley into parts of numerous districts; and

Whereas, the redrawing of these districts would adversely affect the representation of Trinidad and Las Animas County, and the San Luis Valley in the State House of Representatives.

Now, therefore, be it resolved by the City Council of the City of Trinidad, Colorado that:
The City of Trinidad, by and through its City Council, hereby expresses its support for the proposition that the boundaries of the State House of Representatives Districts should not be changed, and that the entire San Luis Valley should remain a single House District, and further that it endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado in the above-referenced lawsuit pending in the Federal Courts.

Introduced, read and adopted this 18th day of February, 1997.
Harry R. Sayre, Mayor
Attest: Lydia Shea, City Clerk

CREEDE CONSOLIDATED SCHOOLS
District 1 • Mineral County
P.O. Box 429
Creede, Colorado 81130
Office: 719-658-2220
Fax: 719-658-2942

Be it resolved that the Creede Consolidated School District #1 at its regular meeting on February 19, 1997, affirm their support that the entire San Luis Valley should remain as a single legislative district, and we endorse this concept as contained in the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado. We feel that it is essential to the rural, political health of our school district to retain local representation.

Rick Inman, President
Ramona Depriest, Vice-President
Jimmy Adelman, Secretary
Kelly Mortensen, Grievance Officer

Be it resolved that the Sanford 6J Board of Education on the date of February 23, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

The continuation of adequate representative government

Results of resolution by roll-call vote:

	Vote:
Paul Jackson	Yea
Darren Edgar	Yea
Mack Crowther	Yea
Tom Stewart	Yea
Tresses Martinez	Yea

Attested to by: Ronald G. Simpson, Superintendent
Paul Jackson, Board President

State of Colorado)
) ss
County of Conejos)

The foregoing was acknowledged before me on this 24th day of February, 1997, by Ronald G. Simpson and Paul Jackson. Witness my hand and official seal. My commission expires 10-5-98.
Sherry W. Signs, Notary

Be it resolved that the Sargent School District RE 33-J Board of Education on the date of February 24, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. The San Luis Valley has small schools. It would be detrimental to our schools if they did not have local representation.
2. Sargent School District relies a great deal on the agriculture business to survive. Our agricultural community also needs local representation.

By roll-call vote:

Name:	Vote:
Donald Barton	Yea
Charles Kaiser	Yea
John McCormick	Yea
Shirley McCullough	Yea
Philip Smartt	Yea

Attested to by: Leon Smith, Superintendent of Schools;

Be it resolved that the Sangre de Cristo Board of Education on the date of February 18, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

To preserve the common interests we share in this isolated area.

Results of resolution by roll-call vote:

	Vote:
James Beiriger	Yea
Mark Brown	Yea
Brian Brownell	Yea
Harriett Mason	Yea
Rob Jones	Yea

Attested to by: Brian D. Brownell, Board President

San Luis Valley Farm & Ranch Management Association

To whom it may concern:

The members of our Association strongly oppose the efforts to change the boundaries and makeup of Colorado House District 60. The San Luis Valley is a unique geographic area and the district that represents the Valley should be left intact. Our needs and interests are much different than other districts along the front range and we feel that we would not be represented fairly by front range representatives. This issue is not an ethnic issue. All Valley residents will lose if our district is split apart.

The directors of the San Luis Valley Farm & Ranch Association firmly support Citizens for the Solidarity of the San Luis Valley in opposition to changes proposed for House District 60.

February 13, 1997
David G. Colville, President
Bob Matthew, Director
Thad R. Elliott, Treasurer
Kelly Desse, Director
Keith Gollard, Secretary
Tony Sanderson, Director
Virgil Valdez

Be it resolved that the SLV Cattlemen's Association on the date of February 12, 1997, believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado, for the following reasons:

1. The San Luis Valley is geographically, culturally, and socially separated from the rest of the state, and therefore should be represented as one district.
2. There are already very few rural districts in the state, therefore diving one of the remaining few, and adding those districts to urban districts would only add to an already growing problem.
3. In being sensitive to our Hispanic members, which we have many, and following much consideration and discussion, it was felt that those members would be best served by remaining as one district, because of the culture and needs of rural Hispanics.

Results of resolution by roll-call vote:
Unanimous vote by the Board of Directors

Attested to by: Brett L. Shawcroft, President
February 12, 1997

RESOLUTION

Whereas, the San Luis Valley of Colorado is a multi cultural, multifaceted community, and

Whereas, the San Luis Valley has many Community Organizations, SLV County Commissioners, SLV Board of Cooperative Services, and many others, and

Whereas, the San Luis Valley of Colorado has achieved many goals, SLV Emergency 911, and the SLV Youth Detention Center, the SLV Regional Medical Center, the SLV Regional Airport, and many others, and

Whereas, the San Luis Valley is a contiguous community surrounded by mountains and is a defined community with like problems and interests, and

Whereas, the proposed re-districting of House District 60 could cause the domino affect to many other House Districts, creating the loss of effective Representation, and

Whereas, the re-convening of the re-apportionment committee and the increase in election costs would cause an unnecessary financial on the taxpayers of Colorado, as there may be re-apportionment with the year 2000 census,

Now therefore be it resolved, that Region 4 of the Colorado State Association of County Clerk & Recorders strongly believes that the entire San Luis Valley should remain as a single legislative district and endorses the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado in order to safeguard the voting privileges of the Valley residents as a group with common interests and so as to prohibit those interests being usurped by becoming members of a Legislative District without those concerns and interests.

Chairman Region 4, Holly Z. Lowder, Alamosa County Clerk & Recorder

Alamosa	Crowley	Mineral
Archuleta	Custer	Montezuma
Bent	Dolores	Otero
Chaffee	Huerfano	Pueblo
Conejos	La Plata	Rio Grande
Costilla	Las Animas	Saguache

Citizens for San Luis Valley Water
P.O. Box 351
Alamosa, CO 81101
719-589-9258

February 18, 1997

Be it resolved that the Citizens for San Luis Valley Water a non-profit citizens group organized in 1989 dedicated to ensure the prudent use of San Luis Valley water in conjunction with preservation of the agricultural, ecological, and recreational environment (CSLVW Position Paper); affirm their support that the entire San Luis Valley should remain as a single legislative district and we endorse the brief that is being filed by the Citizens for the Solidarity of the San Luis Valley and the State of Colorado. We so resolve for the following reasons:

1. We see the San Luis Valley and the Headwaters of the Rio Grande as one self-contained bio-region with significant shared habitat that needs to remain protected.
2. We feel our representation will be better served to have an individual represent the whole basin who also resides here.
3. According to our organization resolution, while we acknowledge the differences among us, we are convinced that we have common interests that can serve as a base for powerful action in protecting the San Luis Valley. The people of the San Luis Valley should determine the allocation of our present water resources and shape the policies for its future use.

Greg Gosar, Rio Grande County	Yea
Greg Stabolepszy, Conejos County	Yea
Christine Canaly, Saguache County	Yea

Attested to by: Christine Canaly, Office Coordinator

APPENDIX D
February 23, 1997
The Denver Post

DON'T PUT RIFT IN VALLEY

Last fall, the U.S. 10th Circuit Court of Appeals ruled that Colorado's House District 60, comprising the San Luis Valley's seven counties, must be redrawn to alter its ethnic proportions. The decision raises these questions:

Who's unhappy with the present boundaries? Could they be changed without altering the proportions of neighboring districts? Should ethnic balance override all other factors in defining a legislative district?

The answer to the first question is the Hispanic group that brought the federal suit in 1992, claiming the present ethnic balance prevents Hispanics from electing a representative of their choice. After failing in federal district court, they won on appeal. The decision noted that Hispanics make up 45 percent of the district, but a Hispanic representative hasn't been elected in the past 50 years. Citing the federal Voting Rights Act of 1965, the appeals court ordered the boundaries redrawn to create a narrow Hispanic majority.

The answer to the second question is elusive. Remaking District 60 to boost its proportion of Hispanics would mean splitting seven counties, three cities and even existing precincts. Such a district would have to stretch eastward to tap the Hispanic populations of Pueblo and Trinidad. This would upset the Hispanic proportions in those districts, causing the domino effect that could reach out into many other districts.

The third question is also laced with imponderables. By mandating a Hispanic majority, the court ignores historic, social and economic factors that make the San Luis Valley a cohesive region. Grafting the district onto a Pueblo County area could well lead to election of a representative from Pueblo who would be more responsive to Eastern Plains interests than to the special needs and problems of the San Luis Valley.

Foes of a reconfiguration point out that Lewis Entz, a potato farmer, has represented the district for the past 14 years, and has been strongly supported by Hispanic and Anglo voters. They suggest he as been so often re-elected not because he is Anglo but because he has been doing a good job.

Because of these problems, the state of Colorado is planning to appeal the federal ruling to the U.S. Supreme Court, perhaps by next month. Hoping to join the state in the effort is Citizens for the Solidarity of the San Luis Valley, a citizens group seeking non-profit status and funding to file a "friend of the court" brief supporting the state's position.

Meeting in Alamosa recently, the group cited endorsements form area

business, government and nonprofit organizations demanding that the valley's House District 60 be left as is, rather than fragmented into some far-flung hodgepodge created only to satisfy ethnic percentages.

Colorado's Supreme Court hopes ride on a "totality of circumstances" argument. If it can convince the court that the valley's geographical, political and historic coherence outweigh the majority-minority factor, then redistricting on that element alone could be found unconstitutional. Such a finding would benefit both the state and the San Luis Valley.

APPENDIX E
November 1990
The Valley Independent

An innovative partnership has been launched in the San Luis Valley providing up to 10,000 acres of land for a cooperative agricultural venture to create jobs and economic opportunities for local residents.

The partnership, Valley Ventures Ltd., was announced in early August by American Water Development Inc., and the newly formed Sangre de Cristo Community Co., an affiliate of the Center Economic Development Corp.

Nearly 70 San Luis Valley residents have already initiated participation in Valley Ventures, which will be operated on American Water's Baca Grant Ranch near Crestone.

American Water's initial contribution - worth an estimated $500,000 - includes favorable lease provisions for approximately 1,000 acres of irrigated land, $200,000 for the purchase of cattle or land, and a cash grant for administrative start-up costs.

The partnership agreement calls for American Water to eventually provide up to 10,000 acres of land and a minimum of 5,000 acres when a decree is granted for the Baca water rights. Additionally, once the Baca Project is under way, American Water will make available enough water to support the agricultural venture - as much as 20,000 acre-feet at rates less than or equal to existing agricultural rates in the Valley.

"Many people talk about economic development, but American Water is really doing something about it for those of us in the San Luis Valley," said Stella Sanchez, president of the Center Economic Development Corp. "Today, crops are being grown for the benefit of our people. Tomorrow, much more may be possible by working through the joint venture."

To initiate the venture, crops were planted don 209 acres of land last spring, and harvested in mid-September. The yield was about 70 bushels an acre of barley and 80 bushels an acre of wheat. After meeting crop expenses, the proceeds will go to Valley Ventures for reinvestment.

For its part in the joint venture, the Sangre de Cristo Community Co. will assist in providing management oversight, hiring employees and staff, coordinating programs and policies, and evaluating expansion into other economic development projects.

Valley Ventures could eventually produce more than $500,000 in annual income and hold land worth and estimated $8 million, according to financial projections.

Jennie Sanchez, organizer for the Sangre de Cristo Community Co., said the annual profits will be reinvested into the joint venture, with some dividends being paid out to the partners. Sangre de Cristo's share will be

split equally among the member families, she said.

The joint venture is a "tangible demonstration of American Water's commitment to create economic benefits for the San Luis Valley coincidental with its water development plans," said American Water president Dale Shaffer.

"History recounts many examples of resources being taken from a region, resulting in the exploitation of local residents. Today we have created just the opposite – an effort that subsidizes Valley water development and directly supports economic growth for local residents," Shaffer said.

The Valley Ventures' board of directors includes four representatives of the Sangre de Cristo Community Co. and four representative of American Water Development Inc.

Sa Luis Valley residents are eligible to participate in the joint venture by becoming member of the Sangre de Cristo Community Co.

Sangre de Cristo's parent organization, the Center Economic Development Corp., is a non-profit entity established to improve the economic, civic and cultural conditions in the town of Center and in the San Luis Valley.

APPENDIX F
April 2, 1997
The Conejos County Citizen
By Frederick C. Sanchez

CSSLV GAINING SUPPORT

The Citizens for the Solidarity of the San Luis Valley as received about 60 resolutions from governments and organizations from throughout the Valley in support of its efforts to keep the Valley as one unit and legislative district in the Colorado House of representatives.

The documents are on file in the Alamosa office of the Citizens for the Solidarity of the San Luis Valley. They include resolutions from almost every local and county government in the six county area, with the exception of the Town of Center and Saguache County.

However, many organizations from Saguache County and Center have submitted resolutions supporting the Citizens for the Solidarity of the San Luis Valley in its brief as a friend of the court in support of Colorado's appeal to the U.S. Supreme Court of the 10th Circuit Court of Appeals' order mandating the state to redraw the boundaries of state House District 60 to consist of a majority Hispanic district.

Organizations in Saguache County supporting the unity of the Valley for its own representation in the state House of Representatives include, but are not limited to, the Center Chamber of Commerce, the San Luis Valley Irrigation District (Center), the Center Potato Growers Co-op Inc., the Saguache County Farm Bureau and the Town and Country Club in Center, the Hearts and Eagle Federated Women's Club and the Center Fire Protection District.

Resolutions were also submitted by the governments of the multi-ethnic boards of Antonito and La Jara and by the Costilla County Commissioners, which head a predominately Spanish-surnamed population. Conejos County, with its three Spanish-surnamed commissioners, submitted its resolution in support of the Citizens for the Solidarity of the San Luis Valley's efforts. All other county governments and towns and cities, as well as other units of local governments and authorities in the Valley submitted documents supporting the Citizens.

The Baca Grande Property Owners Association, representing 5,528 property owners, submitted its endorsement of a united Valley with its own representation in the state legislature.

All 60 resolutions are espousing the view that the San Luis Valley should remain one legislative district for the sake of the common interest of all who live in the Valley.

The San Luis Valley is one of the largest and highest valleys in the world and contains a population of Hispanics, Anglos and other ethnic groups.

The Hispanic population of the Valley is unique because it includes the descendants of the Spanish explores and have their own set of cultural values. Many of these descendants still own properties granted under the Spanish and Mexican land grants of the 1800s. Recently, there has been an influx of Mexican nationals and other Spanish-speaking groups from South America. Each of these groups occupies a different socioeconomic status in the Valley, according to a past article in the now-defunct La Luz (The Light) magazine, which was published in Denver by Daniel Valdez.

These groups of Hispanics are not a politically cohesive association of people and run a gamut from the very wealthy to the very poor, La Luz said. In Center, the labor force is heavily composed of the traditional seasonal worker from Mexico, La Luz said.